

AUG 12 1983

ALEXANDER L. STEVENS,  
CLERK

No. 82-1651

In The  
**Supreme Court of the United States**

October Term, 1983

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CRISPUS NIX, WARDEN OF  
THE IOWA STATE PENITENTIARY,

*Petitioner,*

vs.

ROBERT ANTHONY WILLIAMS,

*Respondent.*

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On Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit

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**JOINT APPENDIX**

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# STATEMENT OF PREVIOUS FILINGS

The following opinions, decisions, judgments, and orders have been omitted in printing this appendix because they appear on the following pages in the appendices accompanying the Petition for Certiorari:

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Opinion of United States Court of Appeals for Eighth Circuit, filed January 10, 1983	A-1
Order of United States Court of Appeals for the Eighth Circuit denying rehearing en banc, filed March 15, 1983	A-19
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Opinion of United States District Court, Southern District of Iowa, Central Division, filed December 18, 1981	A-68
Supplemental Petition for Writ of Habeas Corpus	RA-1*
Petitioner's Post Hearing Memorandum in United States District Court	RA-15

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\* Reply Appendix to Petition for Writ of Certiorari.

**CHRONOLOGICAL LIST OF RELEVANT DOCKET  
ENTRIES**

<b>Date</b>	<b>Proceedings</b>
<b>1980</b>	
<b>Nov. 4</b>	Petition for Writ of Habeas Corpus filed in United States District Court for the Southern District of Iowa.
<b>1981</b>	
<b>Dec. 18</b>	Order of the District Court Denying Writ of Habeas Corpus
<b>1982</b>	
<b>Jan. 18</b>	Notice of Appeal filed with the United States Court of Appeals for the Eighth Circuit.
<b>1983</b>	
<b>Jan. 10</b>	Opinion and judgment of the Court of Appeals for the Eighth Circuit.
<b>Febr. 9</b>	Petition for Rehearing and Rehearing En Banc filed.
<b>March 15</b>	Orders of the United States Court of Appeals for the Eighth Circuit denying rehearing and rehearing en banc.



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On Writ of Certiorari to the United States  
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**JOINT APPENDIX**

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TRANSCRIPT OF MOTIONS  
TO SUPPRESS EVIDENCE

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IN THE DISTRICT COURT OF THE  
STATE OF IOWA  
IN AND FOR POLK COUNTY

CR 55805

State of Iowa

vs.

Anthony Erthell Williams

A P P E A R A N C E S

Robert Blink, Assistant County Attorney,

On behalf of the State of Iowa Roger Owens, Gerald  
Crawford and John Wellman, Attorneys at Law,

On behalf Anthony Erthell Williams.

This cause came on for hearing at 9:00 a.m. May 31,  
1977, before the Honorable James P. Denato, Judge pre-  
siding.

Jeffrey S. Laust  
Official Court Reporter  
102 Polk County Courthouse  
Des Moines, Iowa 50309

Transcript Ordered 6-1-77  
Transcript Delivered 6-7-77

Shorthand Notes Marked:

"FILED POLK COUNTY, IA.  
1977 JUN - 1 AM 9:17  
CLARK R. RASMUSSEN  
CLERK DISTRICT COURT"

(ORIGINAL)

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## PROCEEDINGS

[Printer's Note: Pages 3-90 of Original Transcript]

The Court: Let the record formally show that counsel for the defense have asked for separation of the State's witnesses. Mr. Blink, are you ready to proceed? I gather from what you have told me informally that you will proceed in the order of which the motions to suppress were filed.

Mr. Blink: That's correct, Your Honor.

The Court: The first one would be the motion filed May 16. Are you ready to proceed?

Mr. Blink: Yes, Your Honor. I think we might mark these exhibits at this time and expedite matters.

The Court: Okay, excuse me.

(At this time State's Exhibits A through E were marked for identification by the court reporter.)

Mr. Blink: I believe we are ready to proceed, Your Honor.

The Court: Very good.

Mr. Blink: Your Honor, the State would call John Jutte to the stand.

## JOHN JUTTE,

called as a witness on behalf of the State, having been first duly sworn by the Court, testified upon his oath as follows:

*Direct Examination*

By Mr. Blink:

Q. Would you please state your name?

A. My name is John Jutte, J-u-t-t-e.

Q. Would you please tell us what your occupation is, sir?

A. I am a special agent with the Iowa Bureau of Criminal Investigation.

Q. And how long have you been employed in that capacity, sir?

A. Approximately nine years.

Q. Were you employed in that capacity on the 26th day of December, 1968?

A. Yes, sir.

Q. On that date, did you have occasion to observe a body later known to you to be that of Pamela Powers?

A. Yes, sir, I did.

Q. Where did you observe that body, sir?

A. This was in a rural area of Polk County, Iowa, being approximately a mile south and approximately a mile and a half west of the Mitchellville interchange and Interstate 80.

Q. Mr. Jutte, I would like to hand you what has been marked State's Exhibit C and ask you if you can tell me what that depicts, if you know?

A. Yes, sir. I do know.

Q. And what is it, sir?

A. This is a black and white photograph taken at the scene I just described showing the area and the body you mentioned.

Q. Okay. Now, I hand you what has been marked State's Exhibit D and ask you if you can—

The Court: B as in Baker?

Mr. Blink: D as in dog.

Q. Can you tell us what that depicts, if you know?

A. Yes, sir. That also is a black and white photograph of the same general area, also showing the body you referred to from a slightly further distance.

Q. Now, State's Exhibit C, calling your attention to that, does that fairly and accurately depict the condition of the scene where you observed the body when you first observed the body?

A. Yes, sir, it does.

Q. Okay. Is the State's Exhibit D, as in dog, different from State's Exhibit C, as far as the snow depicted thereon?

A. Yes, sir, Exhibit D, as in dog, shows some movement of the snow; some tracks, et cetera.

Q. Okay. Are State's Exhibits C and D fair and accurate representations of what they purport to show?

A. Yes, sir, they are.

Q. Now, I am now going to hand you what has been marked State's Exhibit B as in baker and ask you if you can tell me what that depicts, if you know?

A. This is a color photograph of the same area taken at some different time.

Q. Okay. You have no personal knowledge as to the time that photograph was taken, is that correct?

A. No, sir, I do not.

Q. Okay. And specifically, does that to the best of your knowledge, does that photograph depict the same culvert which is depicted in State's Exhibits C and D?

A. Yes, sir, it appears to be the same exact culvert and location.

Q. I will now hand you what has been marked State's Exhibit A and ask you if you can tell me what that depicts, if you know?

A. This is a color photograph apparently taken from the air of the same general area; the culvert, et cetera, showing a much larger land-surface area.

Q. Is there an automobile depicted in State's Exhibit B?

A. Yes, sir, there is.

Q. Is there an automobile depicted in State's Exhibit A?

A. Yes, sir.

Q. Now, Mr. Jutte, based upon your recollection in the observation of those photographs, I would like you to take a look at what has been marked as Exhibit E.

Mr. Blink: If I might have assistance in moving this to the bench.

The Court: Well, while we have a moment's break here, before I forget, I take it all of these other people are sheriff's deputies?

Gentlemen, you will be required not to talk about the evidence here today with anybody from the press or anybody who is likely to be talking to the press.

Sheriff's Deputies: Yes, sir.

Mr. Blink: For the record, Your Honor, I would state that Exhibit E are maps obtained from the County Engineer depicting the area of Beaver Township in the eastern portion of Polk County as it is juxtaposed to the western border of Jasper County south of Interstate 80, including the Mitchellville area. May it be stipulated that this map which includes sheets D-7 and D-8 are fair and accurate?

Mr. Owens: It may be, Your Honor.

Q. Mr. Jutte, I would like to hand you this red marker and ask you if you would identify on this map where you observed the body.

A. (Witness indicating.)

Q. The record should reflect that the witness Jutte has circled an area on the map and has placed an X where I trust you state the body was found?

A. Yes, sir.

Q. Now, how do you correlate your indication on the map with the photograph, State's Exhibit A?

A. On the map I follow the line of the road leading south of the Mitchellville interchange one mile where it



intersects with a gravel road heading in a westerly direction. I follow that gravel road approximately one and one-half miles west and there locate a number of features on the map of which correspond with the features in the color photograph, Exhibit No. A.

Q. Are there any buildings depicted in State's Exhibit A?

A. Yes, sir, there are.

Q. Are there any indications on the map which would correspond with those buildings?

A. Yes, sir, there are.

Q. Would you just indicate the buildings on State's Exhibit E?

A. (Witness indicating.)

Q. And would you also indicate on State's Exhibit A the same building with a check mark on the photograph, sir? If you would, please.

A. (Witness indicating.)

Q. Now, to the best of your recollection, you have indicated on State's Exhibit E where you observed the body?

A. Yes, sir.

Q. And is it not also true that you were the individual who found the body?

A. Yes, sir.

Q. And that State's Exhibits A through D depict the culvert area where the body was found?

A. That is correct.

Q. And corresponds with the indication on State's Exhibit E?

A. Yes, sir.

Q. And this is all in Polk County, Iowa?

A. That's correct.

Mr. Blink: I have no further questions on direct, Your Honor.

The Court: Any questions?

Mr. Wellman: Yes, Your Honor.

*Cross-Examination*

By Mr. Wellman:

Q. Officer, what time was it when you came across this body?

A. To the best of my recollection it was approximately 5:45 p.m.

Q. On December 26, 1968, is that correct?

A. Yes, sir, I believe that's correct.

Q. Where were you approximately one hour before that at 4:45 p.m.?

A. Oh, I can't give an exact location, sir. I would have been somewhere east of Des Moines on Interstate 80.

Q. And what were you doing?

A. I was traveling toward Des Moines.

Q. Okay. Were you coming from Davenport, Iowa?

A. Yes, sir.

Q. And were you driving a car?

A. Yes, sir, I was.

Q. And who was in the car with you?

A. I was alone.

Q. Okay. And were you following the automobile containing Detective Leaming and Mr. Williams?

A. I was a distance behind that car. I am not sure "following" is an accurate description, sir.

Q. Well, what were your duties at that time?

A. My duties, primarily, were just to travel from Davenport to Des Moines.

Q. The purpose of that was to follow the car that Mr. Leaming and Mr. Williams was in, isn't that correct?

A. I suppose. Again, I am not sure "follow" is the proper term, but to ultimately arrive in Des Moines.

Q. Now, are you telling us today that you are the first person that came across that body?

A. I can't say I am the first. There were, as I recall, two other officers in the immediate area. I can't really say whether they observed the body a few seconds before I did or a few seconds after.

Q. Well, it was Mr. Williams that pointed out to yourself and Detective Leaming where that body was, isn't that the truth?

A. No, sir. I never talked to Mr. Williams.

Q. Are you telling us that just on your own you discovered that body without any indication that it was there?

A. I had been instructed to look for the body, but not by Mr. Williams.

Q. You mean the purpose of your trip from Davenport to Des Moines, Iowa, was to look for that body?

A. Not initially. No, sir.

Q. Well, who instructed you to look for the body?

A. As I recall, Agent Mayer.

Q. And who was he with?

A. I'm sorry, physically with?

Q. Well—

A. Or his organization?

Q. What was his occupation at that time?

A. I'm sorry, he was an agent with the Bureau also.

Q. And what did he tell you?

A. He instructed me to attempt to locate the body.

Q. Did he tell you where to look?

A. Generally, yes, sir. Not specifically.

Q. When you got off the Iowa Interstate, did you follow the car that contained Mr. Williams and Detective Leaming?

A. There were three cars. I can't recall the order in which—I believe I followed Agent Mayer's car, but I can't really be sure.

Q. Okay. Then he was—it is possible he was following the car containing Mr. Williams and Detective Leaming?

A. That is possible, yes, sir.

Q. And when you came upon the scene where this body was found, there were other people there?

A. That's correct.

Q. And was Mr. Williams one of them?

A. To my recollection, Mr. Williams was in an automobile in the general area.

Q. Well, had that automobile pulled up and stopped by the culvert where the body was found?

A. Again, in the general area. As I recall, it was somewhat beyond.

Q. Well, Officer, are you telling us here today that you found this body just independently through your own efforts?

A. I don't really know how to answer that, sir.

Q. Well, sir, isn't that true that Mr. Williams told police officers where the body was located; drove them there, pointed out the area and then the police officers found the body?

A. I have no knowledge of what Mr. Williams told the other officers.

By Mr. Owens:

Q. Officer Jutte, were there any radio communications between Captain Leaming's car and your car?

A. No, sir.

Q. Who were you following then?

A. Again, I cannot specifically recall if I was directly behind the Leaming auto or directly behind the Mayer auto.

Q. But at any rate, when Officer Leaming's—Captain Leaming's auto turned south on this road, then you followed him, is that correct?

A. Unless Mr. Mayer was between us.

Q. Okay. Then you followed Mr. Mayer if you didn't follow Officer Leaming?

A. That is correct.

Q. And had they not turned south and continued west, you would have followed them west?

A. Excuse me?

Q. On to Des Moines?

A. Had they not turned south on this road, yes, sir.

Q. And had they kept going west toward Des Moines, you would have followed them on that road, is that correct?

A. That's correct.

Q. But you only went south on this road and to the scene of that body because that's where Captain Leaming went, isn't that correct?

A. Yes, sir, that's correct.

Q. You were going to go there anyway, were you, that particular day; that particular time?

A. No, sir.

Q. In fact, your duty was for security purposes to follow Captain Leaming's car, isn't that correct?

A. That's correct.

The Court: Mr. County Attorney, is there any question but that Officer Jutte found the body through the actions of Officer Leaming and the defendant?

Mr. Blink: No, Your Honor. I see no question.

The Court: That's considered by the Court then to be stipulated that you found the body through the actions of Officer Leaming and the defendant.

By Mr. Wellman:

Q. Were you present when those photographs, I believe they are C and D, were taken, Officer?

Mr. Blink: I don't think he can look at them, Your Honor. Counsel has the photographs.

A. I don't recall if I was present or if I had left shortly before they were taken.

Q. How long were you at the scene before you left, Officer?

A. I would estimate less than 30 minutes.

Q. And were the Ident people there by the time you left, do you recall?

A. As I recall, they had arrived. I don't recall how far they had progressed with their investigation.

Q. Okay. Do you recall who scraped the snow off this body?



A. No, sir, I do not.

Q. Were you present when that was done?

A. If I was present, I did not observe it.

By Mr. Owens:

Q. Agent Jutte, as—

Mr. Blink: Excuse me, Your Honor. For the record, the State would request that examination of each witness on behalf of the defendant be done by one counsel.

The Court: You gentlemen plan to proceed this way throughout all the witnesses?

Mr. Owens: Well, just when we are talking about physical exhibits, Your Honor. It is kind of hard for Mr. Wellman to look at the photographs. I am going to talk about the photographs.

The Court: It sounds fair enough.

Mr. Blink: I have no problem with that.

The Court: Go ahead. I keep forgetting, John.

Mr. Wellman: I do too sometimes.

By Mr. Owens:

Q. Agent Jutte, Exhibit C, that depicts what you maintained was the body with the snow on it, isn't that correct?

A. Yes, sir, that is correct.

Q. Prior to any snow being removed?

A. Yes, sir.

Q. And then it is your testimony that the Ident people got there about 30 minutes after you did?

A. This is an estimate. I can't really be certain of the time period.

Q. Isn't it a fact, Agent Jutte, that someone brushed the snow away from the face prior to even Ident getting there?

A. I have no knowledge.

Q. You didn't do that, did you?

A. No, sir.

Q. And State's Exhibit D, doesn't that show a lot of snow trampled down and wasn't there a lot of people there?

A. Exhibit D does show considerable foot traffic in the area.

Q. And that's—that is with the snow brushed off?

A. It appears to be, yes, sir.

Q. Now, is there anything else different about the positioning of the deceased at that time?

The Court: From what, Counsel?

Mr. Owens: From Exhibit C.

A. The only difference I can observe in the positioning of the body is the removal or partial removal of the snow in Exhibit D.

Q. You mean from the time you observed the body, the leg was in the position that is shown in Exhibit D?

A. Well, from memory, sir, I cannot recall the position of the leg from the photograph of C. I cannot, from this position, I cannot see the leg too well.

The Court: Gentlemen, excuse me. Could we have just a moment. Mr. Reporter, would you take each of these photographs and mark the letter, just the letter alone; A, B, C, D, et cetera on the face of it someplace on a border so that we don't have this constant flopping of these things. And hereafter, if it is feasible, would you mark the things on the face. If you can't mark it on the face, put your tag on the back and follow the same procedure here.

Q. Officer, or Agent Jutte, then when you walked up to that scene depicted in Exhibits C and D, did you see, if you recall, with the snow on it, that leg sticking up in the air in that manner?

A. I cannot specifically recall the leg of the body.

Mr. Owens: I have no further questions.

*Redirect Examination*

By Mr. Blink:

Q. Officer Jutte, what drew your attention to the body of Pamela Powers?

A. Initially, I noticed a brightly colored striped object of which I later determined to be a blouse or shirt-waist type thing.

Q. Is that depicted in State's Exhibit C?

A. Yes, sir, it is.

Q. Did you ever brush any snow off the face of Pamela Powers?

A. I did not.

Q. Did you ever observe anyone brush any snow off the face?

A. I did not, no, sir.

Q. Was the face exposed when you observed the body?

A. The face, as I recall, was partially exposed when I first observed it.

Q. And is State's Exhibit C a fair and accurate representation of the body of Pamela Powers when you observed it?

A. Yes, sir.

Mr. Blink: No further questions of this witness, Your Honor.

The Court: Gentlemen, anything further?

Mr. Wellman: Just a couple more questions, Your Honor.

*Recross-Examination*

By Mr. Wellman:

Q. Officer, was it dark at that time?

A. As I recall, it was not dark. No, sir.

Q. Do you have any recollection of any police officers and automobiles using their spotlights?

A. I do at a somewhat later time, yes, sir.

Q. But it is your testimony it was not dark?

A. To my recollection, it was not dark when I initially saw the body.

Q. Now, was it your car, sir, did you shine a spotlight on that culvert area and then start to drive off and were later called back?

A. No, sir.

Q. Did you, while you were present, ever see any car using their spotlights on the culvert area?

A. Yes, sir.

Q. And what officer was that?

A. That would have been a State Patrol Officer, Mr. Wissler.

Q. And that was prior to the body being found, isn't that correct?

A. No, sir.

Q. That was after the body was discovered?

A. That's correct.

Mr. Wellman: I have nothing further.

Mr. Blink: I have nothing further, Your Honor.

The Court: You may step down.

(The witness was excused.)

The Court: Call your next witness.

Mr. Blink: The State would call Wayne—or Carroll Dawson to the stand.

The Court: Mr. Dawson, if you will walk around that thing and come here to be sworn, please.

CARROLL DAWSON,

called as a witness on behalf of the State, having been first duly sworn by the Court, testified upon his oath as follows:

*Direct Examination*

By Mr. Blink:

Q. Would you please state your name, sir?

A. My name is Carroll W. Dawson.

Q. What's your occupation, sir?

A. I am a captain of the police department of Des Moines, Iowa.

Q. Were you employed as an officer of the Des Moines Police Department on the 26th of December, 1968?

A. Yes, sir. I was a lieutenant in charge of the Identification Section on that date.

Q. On that date, did you have occasion to observe a body which was later identified to be Pamela Powers?

A. Yes, sir, I did.

Q. Could you describe where the body was situated?

A. Approximately one and a half miles south and a mile west of the Mitchellville exit on Interstate 80; a road known to me at that time to be 54th Street and the body was situated in against a cement culvert on the north side of this road.

Q. Were photographs taken of that body?

A. Yes, sir.

Q. Were photographs taken of that body prior to its removal from where it was situated?

A. Yes, sir, they were.

Q. Who physically removed the body from beside the culvert?

A. I did.

Q. Would you describe for the Court how you did that?

A. Yes, sir. Pamela's back was against the cement culvert on the west side of the culvert and she was frozen against the culvert. To back up just a little bit, she was partially covered with snow and after the initial photograph was taken, then we brushed away—I brushed part of the snow and found her to be frozen against the cement culvert. Naturally, her whole body was stiff and frozen. I worked with the body by maneuvering the body back and forth until I was able to break it loose from the cement culvert.

Mr. Blink: No further questions.

*Cross-Examination*

By Mr. Wellman:

Q. What time did you arrive on the scene, Officer?

A. I went out there approximately 1800 hours or 6:00 p.m. on the 26th of December, '68.



Q. And how many people were present when you got there, if you can recall? How many police officers?

A. There were numerous present. I don't know the exact number, sir.

Q. Okay. Did you take pictures of the body?

A. I did not that date. Sergeant Limke accompanied me and he did take the pictures himself.

Q. He arrived on the scene at the same time you did?

A. Yes, sir. There was three of us that went out there from our section.

Q. And did you go out there in response to a call from someone?

A. We received our call from the dispatcher's office.

Q. Telling you to go out and take pictures of the body that had been found?

A. Yes, sir. Yes, sir.

Q. Okay. Did you have conversations with officers there concerning any removal of snow off that body before you took photographs?

A. No, sir, I did not.

Q. So you have no personal knowledge as to what amount of snow, if any, had been removed from that body before pictures were taken, isn't that correct?

A. That's correct. Yes, sir.

Q. Did you testify at the first trial of Mr. Williams?

A. Yes, sir.

Mr. Wellman: We have no further questions.

Mr. Blink: Nothing further, Your Honor.

The Court: Officer, could you tell from the condition of things whether snow had been removed or brushed off the body before your photographs were taken?

The Witness: It is my recollection, sir, that I had to brush the snow away to actually see the body—the complete body. I don't recollect that there was any snow previously removed.

The Court: Yes. Any further questions?

Mr. Wellman: Do you recall, Officer, when you first came upon the scene whether you could see the face of the body?

The Witness: No, sir, I don't, not without looking at the photographs and from my recollection.

Mr. Wellman: Okay. I have nothing further.

Mr. Blink: Captain Dawson, I would like to hand you State's Exhibit C and ask you if you can tell me what that depicts, if you know?

The Witness: Yes, sir. This is the body of Pamela Powers lying against the cement culvert.

Mr. Blink: Does that fairly and accurately represent what you recall about Pamela Powers' body in the snow when you first observed it?

The Witness: Yes, sir, it does.

Mr. Blink: Can you recall if prior to the taking of that photograph, you had brushed any snow away from the face of Pamela Powers?

The Witness: No, sir. This is the initial photograph.

Mr. Blink: Thank you. No further questions.

Mr. Wellman: Mr. Dawson, do you have any recollection as to how many pictures were taken?

The Witness: Not exactly that night. We went back the next day and photographed the scene in daylight.

Mr. Wellman: Okay. But the body had been removed by then?

The Witness: Yes, sir, it had.

Mr. Wellman: Would it be fair to say that there were more than ten pictures taken of the body?

The Witness: On the scene?

Mr. Wellman: Yes.

The Witness: That night?

Mr. Wellman: Yes.

The Witness: No, sir. I don't believe there was that many taken. Four or five should have covered it, I believe.

Mr. Wellman: We have nothing further.

Mr. Blink: Nothing further, Your Honor.

The Court: You may step down, sir.

(the witness was excused.)

Mr. Blink: The State would call Dr. Jack Hatchitt.

The Court: Doctor, would you get around this board somehow or another and come up here and be sworn, please?

DR. JACK HATCHITT,  
called as a witness on behalf of the State, having been first  
duly sworn by the Court, testified upon his oath as follows:

*Direct Examination*

By Mr. Blink:

Q. Would you please state your name?

Mr. Owens: Excuse me, Your Honor.

The Court: Excuse me. Just a minute. Are you  
up here on duty?

Bailiff Carstensen: Yes, sir.

The Court: Are you replacing one of the officers?

Bailiff Carstensen: Yes, sir.

The Court: You are not to report or talk to anyone  
about what transpires in the courtroom here today.

Bailiff Carstensen: Thank you, sir.

Mr. Blink: Thank you, Judge.

Q. Would you please state your name?

A. Dr. Jack Hatchitt.

Q. And your occupation, sir?

A. Osteopathic physician and surgeon.

Q. Where did you do your—

Mr. Blink: May it be stipulated as to the credentials  
of Dr. Hatchitt?

Mr. Wellman: So stipulated for the purpose of this  
hearing.

Mr. Blink: Thank you.

A. [sic] Have you ever been a Department Medical Examiner?

A. Yes.

Q. Were you a Department Medical Examiner for Polk County in December of 1968?

A. I was.

Q. In that capacity, did you have an occasion to observe a body later identified to you as being Pamela Powers?

A. I did.

Q. Could you describe for this Court the condition of the body at the time you observed it?

A. Well, when I first viewed the body as it was found before it was moved, it was wedged between the ground and the culvert and frozen. I then helped the—I don't know who it was. There were two or three men down in the ditch with me. We helped take her up the bank.

Q. Was the body frozen stiff at that time?

A. Yes, sir, it was.

Q. Have you seen bodies that are frozen before?

A. Quite often.

Q. You recognize a human body that is in a frozen condition?

A. Yes.

Mr. Blink: I have no further questions.

*Cross-Examination*

By Mr. Wellman:

Q. How did you get to the scene where the body was located, Doctor?

A. Oh, Dr. Luka had been called and I had just recently moved about a block down the street from him, so he called me and asked me if I would drive him to the scene.

Q. I presume Dr. Luka had been called by the police, do you have any knowledge of that?

A. No, I have no knowledge.

Q. What time did you get there, Doctor?

A. Oh, I have no knowledge. I just drove. I didn't take any notes on it. It was not my case, so I just didn't—

Q. Were there police officers present when you arrived?

A. Yes, there was. Officers directed us to the scene.

Q. Was it light or dark, do you recall?

A. It was getting dark, I believe. And it was snowing at this time.

Q. And it was snowing?

A. Yes.

Q. Do you recall light snow, heavy snow?

A. Light snow. It later, in the evening, became heavy. We later drove from that scene out to the home of the parents and it was snowing quite heavily by that time.

Q. So shortly after you left the scene ,it was snowing quite heavily? Is that a fair statement?

A. By the time it took us to get from Mitchellville to Urbandale it was quite heavy.

Q. And how long were you at the scene where the body was located?

A. Oh, approximately half an hour, 45 minutes.

Mr. Wellman: I have nothing further.

Mr. Blink: We have nothing further, Your Honor.

The Court: You may step down.

(The witness was excused.)

Mr. Blink: Excuse me, Your Honor.

(At this time a short discussion was held between counsel.)

Mr. Blink: Would you mark these exhibits, please?

(At this time State's Exhibits F and G were marked for identification by the court reporter.)

The Court: Herman, this is a closed hearing so you shouldn't reveal anything that takes place in here today.

Bailiff Hansen: Yes, Your Honor.

Mr. Blink: Your Honor, we now have two exhibits marked F and G purporting to be local climatological data obtained through the United States Department of Commerce setting forth a substantial amount of weather recordation and so forth, including precipitation, temperature—mean temperatures, wind and so forth. At this time, we would ask that it be stipulated that they are fair



and accurate; that the Court take judicial notice of them and that they be admitted into evidence.

Mr. Owens: We are talking about the months of December and January?

Mr. Blink: That's correct.

Mr. Owens: December 1968 and January 1969?

Mr. Blink: '69, that's correct.

Mr. Wellman: So stipulated.

The Court: Very good. Proceed.

Mr. Blink: Your Honor, the State would call to the stand Tom Ruxlow.

THOMAS RUXLOW,

called as a witness on behalf of the State, having been first duly sworn by the Court, testified upon his oath as follows:

Mr. Blink: Would you mark these, please?

(At this time State's Exhibits H and I were marked for identification by the court reporter.)

Mr. Blink: I would like the record to reflect that we now have two additional exhibits marked I and H; that Exhibit H is a map of Poweshiek County obtained from the Iowa State Highway Commission and the United States Department of Commerce and that Exhibit I is obtained from the same source, but concerns itself and depicts Jasper County, Iowa.

I believe the record should also reflect that copies of these maps have previously been provided to defense counsel.

*Direct Examination*

By Mr. Blink:

Q. Would you please state your name?

A. Thomas R. Ruxlow.

Q. And what is your occupation, sir?

A. Assistant Director with the Iowa Bureau of Criminal Investigation.

The Court: Spell your name, please?

The Witness: R-u-x-l-o-w. Ruxlow.

Q. How long have you been employed in the capacity that you presently have?

A. I have been employed by the Bureau of Criminal Investigation for approximately ten years.

Q. Were you so employed on the 26th of December, 1968?

A. I was.

Q. On that date, did you have occasion to go to Grinnell, Iowa?

A. Yes, I did.

Q. Why did you go to Grinnell, Iowa?

A. I received a radio message through state police radio communications to meet Special Agent Mayer in Grinnell on — at 8:00 a.m. on December 26.

Q. What was the purpose for this meeting?

A. To organize and search for Pamela Powers.

Q. Prior to that time, had you had any discussion with Officer Leaming of the Des Moines Police Department?

A. No, sir.

Q. Had you had any discussion with Mr. Williams, the defendant?

A. No, sir.

Q. Would you state whether or not you were at that time aware that clothing and articles had been found in a rest area near Grinnell?

A. Yes, sir, I was.

Q. How was this search organized?

A. When we arrived in Grinnell, an appeal was made through the local radio station for volunteers to help in the search for Pamela Powers. I was assigned the task of organizing this search and directing its operations.

Q. Do you recall, approximately, how many volunteers were at your disposal for that, sir?

A. Yes, we had approximately 200 volunteers.

Q. Two hundred volunteers. Now, how did you specifically organize an area to be searched?

A. We obtained the two highway maps of Poweshiek and Jasper Counties and they were marked off by myself in a grid fashion. The grids were then reproduced on a smaller scale map provided to the teams. The volunteers were divided up into teams consisting of anywhere from

four to six people per team and assigned to search specific grids.

Q. Is the grid fashion or the grid method of search one which is commonly used in your profession?

A. Yes, sir, it is.

Q. Have you had experience in using that type of search in your business?

A. Yes.

Q. Where was the control center for this search?

A. The control center was at the Grinnell Police Department.

Q. Were the searchers instructed of anything prior to their commencing their actions?

A. Yes, prior to assigning geographical areas in reference to the grid, the searchers were instructed, that when searching, to check all the roads, the ditches, any culverts; they were instructed to get down and look into any culverts. If they came upon any abandoned farm buildings, they were instructed to go onto the property and search those abandoned farm buildings or any other places where a small child could be secreted.

Q. Now, specifically, what areas were to be searched?

A. The areas to be searched was approximately seven miles north and seven miles south of Interstate 80 in Jasper and Poweshiek County.

Q. Why those two counties?

A. Being that the clothing was found at the Grinnell rest area, and it was surmised that the clothing would probably be one of the last articles to be removed and so the area was—the search was concentrated in Poweshiek and Jasper Counties.

Q. Was there a specific direction that the search was to take?

A. Yes. First of all, the search was to be concentrated in Poweshiek County, then into Jasper County, and then westward from Jasper County into Polk County.

Q. Was Polk County to be searched?

A. Yes.

Q. Approximately what time did this systemized search begin?

A. Approximately 10 o'clock on December 26th.

Q. Was this intended to be an around-the-clock search?

A. Yes.

Q. Now, was this systemized search suspended?

A. Yes.

Q. Approximately what time?

A. Approximately 3:00 p.m. on December 26th.

Q. That would be five hours after it commenced?

A. Yes, approximately.

Q. At the time that the search was suspended, how far west had the search progressed?

A. To the county line bordering—well, it would be the west county line of Jasper County as it borders Polk County.

Q. As a specific area was searched and covered, were the searchers reassigned to new areas?

A. Yes, they were.

Q. Did you make an indication on the map, which are now Exhibits H and I, of which areas were searched?

A. Yes. The areas were checked off by myself.

Q. Approximately how many square miles were in fact searched prior to the time the search was suspended?

A. Approximately 510 square miles.

Q. Did the weather conditions at that time inhibit the search?

A. No, sir.

Q. Are State's Exhibits H and I the actual maps that you used at the time?

A. They are.

Q. Now, Mr. Ruxlow, on the 26th day of December, 1968, did you have occasion to observe a body which was identified as that of Pamela Powers?

A. Yes, I did.

Q. Where did you observe that body, sir?

A. Approximately a mile south and one and a half miles west of Mitchellville.

Q. Mitchellville exit?

A. Yes.

Q. Last week, did you have an opportunity to be present when aerial photographs were taken of that vicinity?

A. Yes, I was.

Q. I hand you what has been marked State's Exhibits A and B and ask if you can identify what those photographs depict?

A. Yes. State's Exhibit A is a colored photograph showing a view looking west of the, I think it is 58th Street and the location of the culvert where the body of Pamela Powers was found.

Q. How about Exhibit B?

A. Exhibit B is a photograph looking in a southerly direction, showing a close-up view of the culvert where the body of Pamela Powers was found.

Q. Are those fair and accurate representations of what they purport to show?

A. Yes, they are.

Q. Based upon your recollection and your observation of those photographs, would you look at State's Exhibit E?

A. (Witness complies.)

Q. And tell me whether or not the circle which is depicted on State's Exhibit E is the correct location of where the body was found?

A. Yes, that is the location.

Q. Now, is that in Polk County, Iowa?

A. Yes, it is.

Q. Now, what relation, geographically, did the point where the body was found correspond to the westernmost portion of your search?

A. It is approximately two, two and a half miles west of the furthestmost point that had been searched on the 26th.

Q. How was Polk County to be searched?

A. The same method that the Poweshiek and Jasper Counties were searched. Seven miles north and south, approximately, of the Interstate working in a westward direction.

Q. Were the same instructions as to the objects to be searched present as far as Polk County as were present as Jasper and Poweshiek?

A. Yes, these instructions were to apply to that area also.

Q. Now, is it—it is correct, isn't it, that you did not in fact grid out Polk County to be searched?

A. I believe I had a Polk County map. It was not included with the report because we didn't get to it.

Q. Would the location where the body of Pamela Powers was found have been included in the grid search?

A. Yes, it would have.

Q. And would that have been the easternmost grid to be searched in Polk County south of the Interstate?

A. Yes, it would have.



Q. Would that area have been searched?

A. Yes.

Q. What was the approximate rate of the search?

A. The approximate rate was approximately a hundred square miles per hour.

Q. Mr. Ruxlow, based upon your recollection of the facts and your organization of the search and your experience, do you have an opinion as to when the location or the Powers body would have been searched?

Mr. Wellman: We are going to object to that as the issue for the Court to determine and I don't believe this man has qualified himself as an expert to give that.

The Court: You are asking him to estimate the time that the particular area where the body was found would have been covered by their search had the search not been canceled?

Mr. Blink: Well, that's correct.

Mr. Wellman: He asked—

The Court: Maybe, excuse me, I will have the reporter read the question back.

(At this time the last question was read back aloud by the court reporter.)

Mr. Blink: I will rephrase the question.

Q. The search was disbanded or suspended at approximately 3:00 p.m., is that correct?

A. That's correct.

Q. Had the search continued at its existing rate, approximately, how much later would the area where the Powers body was found have been searched?

A. Approximately three to five hours.

Q. Do Exhibits H and I fairly and accurately represent the grids that you set forth on them?

A. Yes.

Q. Did you, in fact, set forth those grids on them?

A. Yes, I did.

Q. Did you, in fact, check them off?

A. I did.

Q. Did you have an opportunity to see the body of Pamela Powers before it was removed from beside the culvert?

A. Yes, I did.

Q. I would like to hand you what has been marked State Exhibit C and ask you if you can tell we what that depicts, if you know?

A. That depicts the position of which the body of Pamela Powers was discovered on the culvert on 58th Street in Polk County.

Q. To the best of your recollection, at the time that this picture, this picture would have been taken, had any snow been brushed away from the face of the child?

A. No.

Q. How long did you remain at the scene?

A. Two or three hours.

Q. I hand you what has been marked State's Exhibit D and ask you if you can tell me what that depicts, if you know?

A. That's the same culvert as in State's Exhibit C. This is taken a little further away and it shows the, once again, the body of Pamela Powers on the west side of the culvert on the north side of the road.

A. [Sic] Has snow been removed or trampled down as indicated in State's Exhibit D?

A. No. That's exactly the way it was found.

Mr. Blink: Your Honor, at this time the State would offer into evidence Exhibits A through E and H and I.

The Court: Everything is in except H and I, isn't it, gentlemen?

Mr. Owens: H and I being the maps, Your Honor?

The Court: Yes, sir.

Mr. Owens: Yes, it is as I understand.

The Court: Any objections?

Mr. Owens: Nothing had been offered. The photographs haven't been offered.

The Court: Oh, excuse me. They have not been stipulated. A through E and—through I then, excuse me.

Mr. Blink: F and G, Your Honor, I believe have been stipulated.

The Court: Gentlemen, A through I, any objections?

Mr. Wellman: No objections.

Mr. Blink: I have no further questions on direct, Your Honor.

*Cross-Examination*

By Mr. Wellman:

Q. Sir, do you presently work with the B.C.I.?

A. Yes, I do.

Q. And what is your title?

A. Assistant Director.

Q. And what was your title back in December of 1968?

A. Special Agent.

Q. What time did you come upon the scene where the body was located?

A. Approximately 5:45.

Q. And how many officers were present when you came upon the scene?

A. It was myself, Special Agent Mayer, Special Agent Jutte, Captain Leaming, one other Des Moines officer. I believe an Iowa Highway Patrolman, Wissler.

Q. And who came upon the scene first?

A. Who found the body first?

Q. Yes.

A. Special Agent Jutte.

Q. And how long after he had discovered the body did you see it?

A. A matter of minutes.

Q. Now, was it light out or dark out at that time?

A. It was about dusk.

Q. About dusk?

A. Uh-huh.

Q. You are saying it was not dark then at that time?

A. No, sir.

Q. Now, you say that there were perhaps 200 volunteers in this search?

A. Approximately, yes.

Q. And you helped organize that search?

A. Yes.

Q. Okay. And what time was the call put out for volunteers over the Grinnell radio station?

A. Shortly after 8:00 a.m.

Q. And where did they assemble?

A. At the Grinnell Police Department.

Q. And what did you do when a volunteer would come into the police department?

A. Well, first of all, we waited until we had a large group of them and then we separated them as I previously testified and as to the method of searching and then,

they were broken into teams, depending upon the vehicles that they had available to them at that time; snow-mobiles, pickups or four-wheel vehicles and then they were dispatched to the particular geographical location and search area.

Q. Did you take their names?

A. I had a list, yes.

Q. Is that list still available?

A. No, sir, it is not.

Q. And is there a reason for that?

A. It was in my original notes and those have since been destroyed.

Q. Why would your original notes be destroyed?

A. Over a period of ten years, Bureau rules, we keep our original notes for—until after all the appeals in the state courts and then, I destroyed them when I moved to Des Moines.

Q. You mean the B.C.I. has a policy that when a case has gone to the Iowa Supreme Court and no further, that things are destroyed?

A. The officers' notes, after they have been dictated into the report, can be destroyed after a period of approximately three to four years.

Q. Okay. How about the report?

A. The report is still in existence.

Q. But would that indicate the list of names?

A. No, that did not.

Q. Would it indicate the total number of volunteers?

A. Yes, it did.

Q. Do you have that report with you?

Mr. Blink: If the Court pleases, defense counsel has a copy of that.

Q. Now, tell us how you would assign different people to different locations.

A. Depending upon the—well, if, for example, three or four friends came in together, they would be assigned in a team. And depending on what area would be searched, we assigned people with snowmobiles to search the median and ditches along Interstate 80 and they would be assigned a geographical area and after the completion of that search, they would report back either in person or by phone and then be assigned to another geographical location.

Q. Now, what were the weather conditions at this time; at 10:00 a.m., if you recall?

A. It was bright. A little precipitation, if any.

Q. So people, with regard to the median or ditches along Interstate 80, they were to ride snowmobiles—

A. Yes.

Q. —or motor vehicles, they weren't to walk those areas?

A. No, they rode snowmobiles.

Q. About how many people with snowmobiles did you have?

A. I don't recall the exact number now.

Q. Do you have any idea how fast they would go in that type of a search?

A. Yes, I do.

Q. And how fast was that?

A. They were going at that particular time faster along the median and the ditches of Interstate 80 than the motor vehicle traffic was on the highway because of the road conditions.

Q. So they were going rather fast; 25, 30 miles an hour?

A. Yes—I don't know. I couldn't answer that. I wasn't there.

Q. Well, tell me with regard to a side road, a road that either led from Interstate 80 or was an east and west gravel road that would parallel it, how were those types of roads to be searched?

A. Sometimes they were searched by snowmobiles. Sometimes they were searched by motor vehicles. Upon finding a culvert that went underneath the road, the searchers got off and went down and checked the culverts.

Q. You mean they got down and looked into the culverts?

A. Yes, sir.

Q. That's what they were instructed to do?

A. Yes. And that's the reports I was getting back also.

Q. Okay. With regard to a ditch on either side of the road that I have posed in my hypothetical, a typical country gravel road, no one was searching those ditches?



A. They were searching from the vehicles.

Q. Just visual, driving along and looking into them?

A. Yes.

Q. There was nothing like anyone walking through the various ditches at this time?

A. No, not unless the ditch was inaccessible of observation from the road; then they would get down and go into the ditches.

Q. And you were looking then, I guess, for a visual body; a body that would not have been covered by anything?

A. We were searching for anything that would be visible from the road. And if it—you couldn't see into the culvert, you were to get down and go into the culvert or any outbuilding of an abandoned farm.

Q. How about the ditches if they were weeded?

A. They were instructed to get down and go through that.

Q. You told us before that you said you had searched approximately 540 square miles?

A. Yes.

Q. Now, your report doesn't indicate that, does it?

A. No. The report indicates something like 180 square miles in Poweshiek County. That's inaccurate.

Q. Why would that be inaccurate?

A. I am not sure. I think what happened is I estimated it at that time and I have since refigured it by actually measuring the map and the figure is inaccurate.

Q. How about Jasper County?

A. That's fairly accurate.

Q. Do you know how far across Jasper County is?

A. It is—

Q. From east to west?

A. Jasper County, I would have to measure it again.

Q. You couldn't give us a rough estimation at this time?

A. Not without a ruler.

Q. It would be more than 20 miles from east to west, wouldn't it?

A. Yes.

Q. Okay. And in this report, you say you covered—what was it you say you had covered; 208 square miles in Jasper County in your report, didn't you?

A. Yes.

Q. Pardon me?

A. Yes.

Q. Okay. If you were searching seven miles either side of the Interstate, that would be north to south, you were searching 14 miles, isn't that correct?

A. I said that would be approximately. Sometimes it was in excess of seven miles. Sometimes it was a little less than seven miles.

Q. Okay. But if we were to approximate, can we accept that figure of seven miles either side as an average?

A. Approximately, yes.

Q. So that would be 14 miles north and south from the Interstate and if Jasper County were only 20 miles from east to west, that would be 280 square miles, wouldn't it?

A. I'm not sure.

Q. Fourteen times 20.

A. Before I answer a question, I would want to measure the map and refigure it. If you would like to have me do so—

Q. Well, I certainly would if we have a ruler.

The Court: There is one in my desk drawer in the center.

A. Jasper County is approximately 30 miles east or west.

Q. Okay. So then if we took 30 times 14, that would be 420 square miles, would it not?

A. Yes, but it is not quite seven miles north and south of Interstate 80. Some areas it was two, two and a half miles. Some areas it would be six miles, some areas would be even further than that seven miles.

Q. Well, what would distinguish?

A. The particular geographical location.

Q. Now, Officer, did you make any record of when volunteers—did all the volunteers work from 10:00 to 3:00?

A. Yes. I kept a log of the list of all the volunteers.

Q. Why was the search called off at 3:00?

A. I was instructed to—myself and Special Agent Mayer was instructed to meet Captain Leaming at the Grinnell truck stop there at approximately 3 o'clock. We went out and met with him and then we were instructed to follow him to Des Moines.

Q. But why would that cause you to call off the search?

A. Because we, the Bureau personnel, were the only ones that were conducting the search and, therefore, there was no one else left there to continue on. The search was suspended at that time.

Q. Well, the volunteers were there, weren't they?

A. That's correct, they were.

Q. And you simply could have given them directions as to where to go, could you not have?

A. No, because there wasn't any police officers there to assume my position of coordinator of the search.

Q. Do you mean that you could not have gotten anyone else from the B.C.I. or from the sheriff's department or from the Grinnell Police Department to conduct the search?

Q. Grinnell Police Department personnel were handling their routine business, as well as searching the outer perimeters of Grinnell. The sherriff's office was doing likewise.

Q. What was the weather condition at 3 o'clock?

A. As I recall, it was bright out, chilly, cold.

Q. Well, how did you communicate to the volunteers, these 200 people, that the search was just going to quit at 3 o'clock?

A. Well, everything was left in motion at that time to complete and we left—actually pulled up stakes and left the search as it was in progress.

Q. Now, was this—had you not gotten that call, how long did you plan to conduct the search?

A. As long as the volunteers would hold out.

Q. Well, how would they do this in the dark, sir?

A. With flashlights and such.

Q. Would—do you think that would slow them down a little?

A. Yes, it would.

Q. And how about if it was bad weather; if it was snowing?

A. It all depends on what degree of bad weather, which I can't speculate at this time.

Q. Were there flashlights around to equip the volunteers with if they were to work in through the night?

A. No, the volunteers had their own.

Q. Well, did they have it at that time when they came during the day?

A. I don't recall.

Q. Do you recall just one name of any volunteer that worked with you at that time?

A. No. I don't.

Q. Was anything found as a result of this search?

A. Oh, several incidental things that were brought in that proved to be not pertinent to the investigation.

Q. Right. Nothing involved in this case?

A. That's correct.

Q. But some things were located and brought back to the headquarters by various volunteers?

A. Yes, uh-huh.

Q. Do you have any idea how many culverts there were in the area that you conducted the search over?

A. I have no idea.

Q. Are they located on these maps that you have?

A. The culverts?

Q. Right.

A. No.

Q. Well, then it is possible, isn't it, sir, to just drive down a road and not see a culvert, wouldn't that be possible?

A. It might be possible.

Q. If you could not direct the volunteers to, by your grids and maps, where various culverts were, then it was just up to their visual observation to determine that, isn't that correct?

A. That's correct.

Q. And as it got dark, then, of course, it would make it much more difficult to see any particular culvert, isn't that correct?

A. It all depends on the kind of culvert. I can't speculate on that.

Q. Right. Okay. Is it true that the most you can tell us is how you instructed people to conduct the search as opposed to knowing exactly how the various volunteers did conduct the search?

A. No. I actually received reports back from various highway patrolmen, sheriff's deputies, that the volunteers were doing an excellent job of getting out of their vehicles, getting down, actually crawling into culverts to check them out.

Q. All 200 volunteers?

A. Not all 200.

Q. Now, would you characterize this in the manner you have described it as a thorough-type search—

A. I believe so.

Q. —as opposed to a rather cursory one?

A. Thorough in respect to the geographical area covered in a systematic search.

Q. Have you been involved in any of these type of searches recently?

A. Yes, uh-huh, not exactly of this same nature, but similar-type searches.

Q. Were you involved in the search for—okay, like Mrs. Holliday from Grimes, Iowa recently?

A. No, sir. No, sir.

Q. You have told us that the search was called off at 3:00 because you were ordered somewhere else, isn't that correct?

A. That's correct.

Q. When would it have been resumed?

A. I can't say because it was never resumed.

Q. Well, why wasn't it?

A. Because the body was found; the object of the search was discovered.

Q. But you didn't know that at 3 o'clock when it was called off, did you?

A. No.

Q. Now, let's presume the body had not been found, do you have any idea of when the search would have been continued?

A. I'm sorry. Would you repeat the question?

Q. You called off the search. The search was stopped at 3 o'clock on the 26th, isn't that correct?

A. That's correct.



Q. And do you remember what day of the week that was?

A. No, sir, I don't.

Q. Well, I think we can get that to the Court later, but presuming the search may not have started again until the next day, isn't that correct?

A. I have no way of knowing. It could have started up within a couple of hours; three hours, it could have started up the next morning. There is a lot of variables.

Q. How would you have reassembled the volunteers?

A. Put out another call for them.

Q. But by then it would have been dark, wouldn't it?

A. See, the volunteers were still out searching at the time I left the Grinnell area. They were still out conducting searches and they were still—some of them had assembled yet to await for further instructions. Some groups were still at the police department when I left.

Q. Well, you have no idea then when the search might have restarted?

A. I have no way of knowing. We never even considered restarting it after we found Pamela Powers.

Q. Okay, but that was at quarter to five—

A. That's correct.

Q. —or a quarter of six?

A. Yes.

Q. That was almost three hours after you had abandoned the search, isn't that correct?

A. Yes.

Q. Now, during that time period, did you ever have any idea of resuming the search?

A. No, sir.

Q. Why not?

A. Because we were en route to Des Moines and I was waiting further instructions at that time as to the next assignment.

Q. If the 27th of December was a Monday, you would have substantially fewer volunteers, isn't that correct?

A. I have no way of knowing how many volunteers we would have gotten on a specific date.

Q. Well, from your experience in doing these types of searches, do you have more volunteers on weekends than you do during a workday?

A. It is difficult to say. It all depends on the nature of the request; the type of case you are involved on, the public appeal it has. There is a lot of variables there that enter into it.

Q. Okay. You have told us that when you left, some volunteers were still out in the field conducting searches, is that correct?

A. Yes, that's correct.

Q. When they reported back to headquarters was there anyone there to give them further instructions?

A. No.

Q. Were they given any instructions?

A. Not to my knowledge.

Q. Were they told to go home?

A. I have no way of knowing.

Q. Just no one was there—

A. That's correct.

Q. —in an official capacity, isn't that correct?

A. There could have been someone from the sheriff's office there, I am not sure.

Q. Well, did you leave him any instructions as to what to tell the volunteers?

A. I told them that we were—let me think just a minute here. I think the sheriff from Poweshiek County was there. I think we told him something to the effect that we had to go right now, but we would be back.

Q. And what is his name?

A. Max Allen.

Q. Do you think you told him that?

A. Yeah, because he was working with us at the control center.

Q. Well, didn't you tell him when you would be back?

A. No, I had no way of knowing.

Q. Before, I asked you if any of the Grinnell police or sheriff's department or highway patrol or other B.C.I.

officers could come and take over direction of the search and you told me no, didn't you?

A. Yes, nobody did take over the search.

Q. Could the sheriff have done that?

A. He didn't.

By Mr. Owens:

Q. Officer Ruxlow, concerning this map you have in front of you, these maps--

A. Yes.

Q. Exhibits I and H, when did you put in the red portion on these maps?

A. When I graphed out the area.

Q. When did you do that?

A. On the 26th.

Q. Of what day?

A. Twenty-sixth of December.

Q. That's not the map you used on the 26th of December, is it?

A. Yes.

Q. Well, why does it have the date--this is the same map you used on those dates?

A. Yes.

Q. Now, wherever you see a check, like where it says 11C--

A. Yes.

Q. —what does that check mean?

A. It means that the area has been searched.

Q. And who would tell you it was searched?

A. The person that was put in charge of that team.

Q. In other words, you had team leaders, is that correct?

A. Yes.

Q. You don't remember any of those team leaders?

A. No, it has been ten years, Counselor.

Mr. Wellman: We have nothing further at this time.

Mr. Blink: I have nothing further, Your Honor.

The Court: Officer, when you left at 3 o'clock, did you have the understanding that you were coming up on the automobile that was carrying the defendant back to Des Moines?

The Witness: Yes, we had met with them at the truck stop in Grinnell, at the interchange.

The Court: What was your state of mind as to whether you were likely to be led to the body?

The Witness: I was under the impression that there was a possibility that we could be led to the body at that time.

The Court: Gentlemen, anything further?

Mr. Owens: Who gave you that impression?

The Witness: Captain Leaming.

Mr. Owens: No further questions.

Mr. Blink: Nothing further, Your Honor.

The Court: You may step down, sir.

(The witness was excused.)

Mr. Blink: Your Honor, at this time I would like to ask for a recess in accommodating one of my witnesses who has to travel some distance to get here.

The Court: Gentlemen, could we have our mid-morning recess at this time?

Mr. Owens: Yes, Your Honor.

The Court: I just suggest, gentlemen, that you stay in the room, but you may use your own judgment on that.

(At this time a short recess was taken.)

The Court: Proceed, gentlemen.

Mr. Blink: Your Honor, the State would call Dr. Earl Rose to the stand.

The Court: Would you try to get around that blackboard some way or another.

DR. EARL ROSE,

called as a witness on behalf of the State, having been first duly sworn by the Court, testified upon his oath as follows:

*Direct Examination*

By Mr. Blink:

Q. Would you please state your name for the record?

A. Earl Forrest Rose. R-o-s-e.

Q. And what is your occupation, sir?

A. I am a physician.

Mr. Blink: Can we stipulate to the credentials of Dr. Rose?

Mr. Wellman: Just ask him where he got his training.

The Court: Excuse me. Young man, did you just leave those things downstairs with the clerk?

Robert Rigg: Yes, sir.

The Court: Do not leave them very long.

Robert Rigg: No, I was going to get them.

The Court: Excuse me for interfering.

Mr. Blink: That's all right.

Q. Dr. Rose, what is your area of endeavor?

A. I am a pathologist by specialty.

Mr. Wellman: We will stipulate to his credentials.

Q. Dr. Rose, where are you presently employed?

A. I am employed by the University of Iowa at the College of Medicine.

Q. Doctor, could you tell us what the effect—strike that. Could you tell us what decomposition of a body entails?

A. Decomposition of the body is the breakdown of the body. It entails both the digestion or the lysis, l-y-s-i-s, which means dissolving of the body by our own en-

zymes that are in our system; in ourselves and also by breakdown of the body by bacterial enzymes or enzymes from the bacteria that are in our bodies and are released and generally disseminate throughout the body at the time of death.

Q. What is the effect of cold upon decomposition?

A. Generally speaking, the effect of cold is to slow down, to delay or to halt the effect of these enzymes on the body dependent on the degree of the cold.

Q. What is the effect of freezing or subzero temperatures upon decomposition?

A. That will cause a cessation of these enzymatic actions and, therefore, the breakdown of the body thus preserving the body.

Q. Doctor, if you would assume the following for me: That we have the body of an approximately ten-year-old girl; that it is frozen at approximately 5:45 p.m.; that it is partially clad in clothing; that it is in a subzero temperature at 5:45 p.m. and remains in the subzero temperature; that there is a slight trace of precipitation of less than an inch in its exposure to the exterior elements and the body in that condition is found three to five hours later. Do you have an opinion as to the effect that would have upon decomposition of the body?

A. Yes, I have an opinion.

Q. Okay. What is that opinion?

A. My opinion is that no further decomposition would take place until the temperature was elevated to



that degree where enzymatic action and decomposition would take place.

Q. Would such a body have been preserved to the extent that a normal examination or routine postmortem could have been performed?

A. Yes, after the body was thawed to permit this type of examination.

Mr. Blink: I have no further questions.

The Court: Gentlemen, you indicated you wished to defer cross-examination until this afternoon, is that still your wish?

Mr. Wellman: That would be our preference. I feel we have to wait until after we have our consultation.

The Court: Counsel, I need to ask you a question. In order to understand your point, I will have to understand your question. I seem to be hearing you say that you started out at 5:45 p.m. and that the body was found three hours later?

Mr. Blink: Oh, excuse me, Your Honor.

The Court: Did you say such a thing, Counselor?

Mr. Blink: For clarification's point, the Court is correct as far as—my statement was in error.

The Court: Perhaps you can rephrase your question.

Mr. Blink: I will, Your Honor. You are correct.

Q. Doctor, we also add the following fact: That, although, the body—

The Court: Excuse me, Counsel. If you add to what I don't understand already, I still mean—perhaps I am not understanding your question.

Mr. Blink: The intent, Your Honor, is to demonstrate that the body, in its frozen state—

The Court: Counsel, you haven't understood me at all. I just don't understand your question to the doctor. Now, if you add to that misunderstood question, I don't understand the total either any more than I do this part, you see? I would like to suggest that you rephrase it, because I don't understand the hypothetical question that you put to the doctor.

Mr. Blink: Do you desire the State to go with the initial premise for this hypothetical, Your Honor?

The Court: Counsel, I don't desire anything. It is not desire that counts, I simply want to inform you that I must make rulings on this and I have got to understand your question and I don't understand the question of 5:45 and then three hours later. I don't understand that at all.

Mr. Blink: Well, I—

The Court: You could certainly stand on your record, of course, if you wish.

Mr. Blink: No, Your Honor. I guess that confusion is present on both my part as well as the Court's as far as you're concerned. We have indications that, in the record, the body was found.

The Court: Counsel, I am not going to allow you to argue your question now.

Mr. Blink: I don't intend to, Your Honor.

The Court: You don't need to do anything if you don't want to. I am just telling you I make my rulings on what I hear, not on what you meant because I don't know what that is.

Mr. Blink: Very good, Your Honor.

(By Mr. Blink, continuing)

Q. Doctor, you had an opportunity to observe and read the climatological data for the months of December 1968 and January through April of 1969, is that correct?

A. Yes, I have.

Q. And you have stated that a body which is frozen would inhibit decomposition of the body?

A. Yes, sir.

Q. Now, assuming that a body is in a frozen condition at approximately 3:00—excuse me, 5:45 p.m. on the 26th of December, 1968, and that subzero temperatures existed throughout the balance of the month of December. Do you have an opinion as to whether or not had the body been found at a later time during December of 1968, whether decomposition would have been substantially altered so as to preclude a later autopsy?

A. Yes, I have an opinion.

Q. What is that opinion?

A. It is my opinion that if the body were frozen at 5:45 p.m. on December 26, 1968, and if the freezing conditions as demonstrated by the local climatological data that was supplied to me is correct, it is my opinion that no substantial alteration in the body would have taken

place during the remainder of the month of December being of substantial alteration in the body that would have significantly or materially altered the body to change its availability or condition for the performance of a post-mortem examination.

Those conditions, from looking at these records, it is my opinion, would probably have prevailed until the month of April; at which time there was an extended period of elevated temperatures, many of which were above 50 degrees Fahrenheit.

Q. Now, the climatological data also indicates that on the 25th day of December, 1968, subzero temperature was existent throughout that date.

A. Yes, sir.

Q. If we assume that the body was in a frozen condition at 3:00 p.m. on the 26th of December, 1968, and that the body is found between three and five hours after that, which would be between 6:00 p.m. and 8:00 p.m. on the 26th, would the body have been preserved to the extent that a normal postmortem could have been performed?

A. Yes, I think so. Of course, after thawing out. May I add to that?

Q. Yes.

A. But a postmortem could have been performed all the period of time until the body thawed out, unless there was destruction by some other force.

Q. Would the hairs of the body have remained in substantially the same condition?

A. Yes, it is my opinion they would have.

Mr. Blink: Would you mark these exhibits too?

(At this time State's Exhibits J, K and L were marked for identification by the court reporter.)

Mr. Blink: Your Honor, we now have marked as State's Exhibits J, K and L the climatological data for the months of February, March and April of 1969; and we would ask that those be stipulated as fair and accurate and offer them into evidence.

Mr. Wellman: So stipulated.

The Court: Counsel, I don't understand. Are these weather records that the doctor has been referring to in his testimony?

Mr. Blink: Yes, Your Honor.

The Court: Do you have any further questions, Counsel?

Mr. Blink: No, Your Honor, I don't.

The Court: Do you gentlemen wish to cross-examine?

Mr. Wellman: Well, we might save some time, Your Honor, if I could initially get into it.

The Court: Fine.

Mr. Wellman: There might be a situation where we need not call him back.

The Court: Fine. Proceed.

*Cross-Examination*

By Mr. Wellman:

Q. Now, Doctor, has the Medical Examiner's report concerning a body found on December 26, 1968 been provided to you?

A. Yes, it has.

Q. And that was done by Dr. Luka?

A. No.

Q. Pardon me?

A. No.

Q. I mean the Medical Examiner's report was done by a Dr. Leo Luka, is that correct?

A. Oh, yes, sir. I am sorry. Yes, I thought you meant was it provided by Dr. Luka. I apologize.

Q. Have you refreshed your recollection of that report before taking the stand today?

A. I looked at it, yes, sir.

Q. Okay. Now, of course, when that body was found at a quarter of six, 5:45 p.m., on December 26 and Dr. Luka looked at it shortly thereafter and took it to the morgue, he made one observation concerning the face of the body. Do you recall what that was with regard to the gathering of blood in the face making it dark appearing?

A. I believe that you are alluding to the fact that he said it was cyanotic or blue?

Q. Yes. Okay. Would that condition have existed through the month of December because the body was frozen?

A. I think that this would have persisted until the body was thawed out, yes, sir.

Q. Now, say that body had remained frozen, let's say, for 48 hours from the 26th, say, it was found on the 28th.

A. Uh-huh.

Q. You are telling us that that condition would still have existed?

A. Yes, sir. It is my opinion the cyanosis would still have persisted.

Q. But would the interpretation of that condition be the same? In other words, Dr. Luka said that that was probably an indication of suffocation or strangulation. Do you recall that?

A. I believe that he did interpret it that way, yes.

Q. But 48 hours later in a frozen condition, one observing that, could that condition be attributed to the freezing itself?

A. I would not attribute it to the freezing, sir.

Q. Is what you are telling us that the freezing of the body itself would not have altered the condition of the body as it was found on December 26?

A. I think it could have preserved the condition of the body.

Q. Okay. With regard to samples taken by Dr. Luka from the rectal and vaginal area of the body, which he concluded contained acid phosphatase, would that condition have existed until the body thawed?



A. Yes, I think that those would have been preserved as well, sir, because if we are dealing with enzymatic activity with bacteria also, it applies for enzymatic activity of other areas equally.

Q. Now, you noted in the report that this only contained acid phosphatase and no spermatazoa—

A. Yes, sir.

Q. —and not the usual sperm, if it was seminal fluid. But if that fluid showed positive for acid phosphatase, then the sperm would have been preserved also?

A. I believe they would have, yes, sir.

Q. Now, in 1968, Doctor, at that time was it possible, once the test is performed, to show acid phosphatase; could it have been measured in international units at that time?

A. I don't recall in 1968 that—I think it was very frequently reported as positive and negative by many laboratories and was not measured in the units by the—

Q. But today in that situation, it would be measured in international units, isn't that correct?

A. We would like to have it measured in units, yes, sir.

Q. And, of course, if it is done that way, then you can get some idea of the time that the—if it was seminal fluid—was put into the body?

A. There has been one report to the effect that time intervals can be determined from that. This—but I have no experience with that particular aspect of determining



a time interval based on the decay or deterioration of acid phosphatase, so I would be really very reluctant to express an opinion on that.

Q. Okay. If it was possible to do it in 1968, again, with measuring it in units, the units would not have deteriorated because the body was frozen?

A. I think they would have remained rather stable.

Q. Pardon me?

A. I think they would have remained stable, excuse me.

Q. Would continued freezing of a body, a body continuing to be frozen for some period of time, would the finding of acid phosphatase necessarily indicate seminal fluid or could there be another explanation?

A. It depends to a degree upon the level that you are dealing with. The finding of acid phosphatase in the female genital tract in very low amounts is apparently present normally, but it has to be very low amounts of this.

Q. But when the test is just for positive or negative, then we don't know the amounts, isn't that correct?

A. That's true, sir, because we don't know the sensitivity of the test used for this.

Q. With regard to the observations of the brain of the body, would that have been the same until it had thawed?

A. Yes, it is my opinion that that would have remained.

Q. And the lungs?

A. And the lungs, yes, sir.

Q. <sup>A</sup>Do you have any opinion as to how long it takes a body to thaw, say, that body taken to a mortuary where the temperature was 40 degrees? How long would it take to thaw?

A. I think a good period of time at 40 degrees, but again to give a specific term in terms of hours, I can't do that. You see, it would depend upon the size of the body I think too as well.

Q. Would thawing and refreezing have any effect upon the body at least with regard to the observations that Dr. Luka was able to make?

A. It would depend upon the interval between the thawing, refreezing and thawing and how long it was thawed out, because if it was thawed out for a good period of time, then, of course, we would have enzymatic decomposition; but if it was just thawed out before the examination, I think the change would be not significant.

Q. Well, of course, the outer portions of the body would thaw out first, isn't that correct?

A. Yes, sir.

Q. I mean the face would thaw quicker than the internal organs, isn't that correct?

A. Yes, that's true.

Q. And could that possibly have caused this condition of the blackening or bluing of the face?

A. No, I think the bluing of the face was—is blood in the face, you know, that's what caused the blue color

is blood that does not have oxygen. Just like we have on the veins on the back of your hands. And I think that, as with the other physical findings, that kept and preserved it very closely and accurately reflecting the condition at the time of the freezing.

Q. Well, I am trying to think of the term. In any normal death, the blood stops flowing and in that—and that condition does itself—isn't that called livid?

A. Lividity, yes, sir, you are correct.

Q. How do you distinguish that condition from cyanosis?

A. How do I distinguish lividity from cyanosis?

Q. Yes.

A. Oh, they are both from blood settling into areas of the body.

Q. Well, if this body had died from other means than suffocation or strangulation, would the facial observation be the same?

A. Would you repeat that?

Q. Okay. If when a person dies, the blood stops flowing and there is this indication which indicates a blue color or a black color, just by death alone, wouldn't a person's face look blue or black?

A. It may be, but it is the dependent portions of where the face is since gravity influences the settling out of blood. It settled out into the most dependent parts of the body.

Q. Doctor, also, these slides that were taken by Dr. Luka at the time the body was found and then thawed, these aspirated solutions which indicated the presence of acid phosphatase, if they were indeed seminal fluid, could they be preserved and tested for blood type?

A. Yes. Blood typing can be done on the seminal fluid.

Q. Now, they could have been done at that time, isn't that correct?

A. Yes, sir.

Q. And if those slides were still preserved, could it be done today?

A. If we still had those slides, oh, I don't know. That would depend upon how they were preserved, where and the circumstances, because again this is tissue of a type too and, of course, it can deteriorate and dry out and lose its activity over a period of time, so that would depend upon the temperature where it was preserved.

Q. Is there no normal procedure for preserving slides at least at that time in 1968 that would—

A. For acid phosphatase?

Q. Well, for this substance that the doctor concluded was seminal fluid.

A. I think to be as accurate as I can be, if we had a slide that was stained and there were spermatazoa on that, those certainly would be kept in a stable situation indefinitely that we could relook at the slide again for the spermatazoa, because that's a visual observation on a microscopic slide. But to do a chemical test on a slide

is—because the enzymes that are there, I believe would probably be—would deteriorate, dependent upon where they were at.

Q. Okay. What Journals do you subscribe to in your profession, Doctor?

A. In my profession?

Q. Yes, with regard to forensic pathology.

A. Journal of Forensic Sciences; The Criminologist, although, that hasn't been published for, I think, a year or two.

Q. Well, with regard—

A. The American College of Pathology Laboratory Medicine; The American Society of Clinical Pathology; The Cancer Journal; The American Medical Associations Journal; New England Journal of Medicine; Hastings Review—

Q. Okay. I think that's enough.

A. Yes. Yes.

Q. Now, with regard to these Journals, have you read within the last year of a situation in Pittsburgh, Pennsylvania in a rape case where nine years later a pathologist looked at the slides of seminal fluid, made the test as to blood type and it excluded the defendant after a period of eight or nine years? Have you read anything about that case in your Journals?

A. I don't recall the case, sir.

Q. What does freezing do to the body with regard to determining time of death?

A. After it is frozen, there is really no way that you can determine the time of death just from looking at the body. You have to go into other situations in the—and the circumstances in order to determine that.

Mr. Wellman: I think we are through at this point, Your Honor. If we could just ask him to be back at 1:30, I'm sure it would be very brief.

The Court: Gentlemen, is that agreeable?

Mr. Blink: It is, Your Honor.

The Court: Doctor, you are excused. If you could be back at 1:30, they will conclude their cross-examination.

Dr. Rose: Thank you, sir.

The Court: Call your next witness.

Mr. Blink: My next witness was scheduled for after lunch, Your Honor. I anticipated longer cross-examination.

The Court: Oh, I see. Okay. Then we will be recessed until 1:30 sharp.

Gentlemen, could I see you in my office briefly?

(At this time the morning record was closed at 11:23 a.m.)

#### Afternoon Session

1:30 p.m.

The Court: Dr. Rose, you remain under oath, of course.

Dr. Rose: Yes.

The Court: Proceed, Counsel.

*Cross-Examination*

By Mr. Wellman:

Q. Dr. Rose, you previously told us that you had examined Dr. Luka's Medical Examiner's Report, is that correct?

A. Yes, sir.

Q. And, of course, you—scratch that. Is it not true that that report indicated that part of the body, the facial area, had been disturbed; Dr. Luka concluded by some sort of an animal, is that correct?

A. Yes, sir.

Q. Okay. Now, in your experience with—your professional experience as a forensic pathologist, is that not an uncommon occurrence when a body is left in a rural area?

A. Yes, sir. It is not uncommon, sir.

Q. And do you have any opinion as to the rate that a body might be disturbed in that manner if left in a rural setting where the body was frozen?

A. Well, I am not quite sure what you mean. Until the body was completely eaten away or until superficial injuries were there or—

Q. Well, I am asking you with regard to the facial area, it is a possibility that the observation of cyanosis of that facial area would not have been possible had the body deteriorated by rodents or animals knowing away that area of the body, isn't that correct?

A. If the face had been eaten away, yes, then we could not determine the cyanosis, yes, sir.



Q. What I am asking you, is there any way to determine or to give an opinion as to what period of time that would likely happen in that rural setting?

A. No, not in my experience. I don't know how long it would have taken. It would have depended upon the animals that would have eaten at the body. I have no way of knowing how prevalent they were in that area.

Q. Now, with regard—you talked about enzymes and they would not deteriorate in a frozen condition and I asked you specifically with regard to acid phosphatase. Now, is that an enzyme?

A. Yes, sir, it is.

Q. Now, would the temperature, if it were more specific than just frozen, if we talked in degrees of 32 down to zero, with temperature ranges within that range of zero to 32 degrees, have any difference as to how that enzyme might deteriorate?

A. It is my opinion that it probably would not make any difference between zero and 32 degrees; 32 degrees being the freezing point, of course.

Q. So if it were 31 degrees, in your opinion it wouldn't make any difference if it were 31 or 10 below zero?

A. I think it would be the same for all practical purposes, yes, sir.

Q. Can I ask you at what rate a body might thaw out after being removed from a frozen area and, as I recall, you weren't really able to give us time in terms of hours?



A. No, I could not. That would depend again I think on the environment temperature in which the body was in—in which it was thawing.

Q. Well, do you have any way to give us an opinion as to what period of time the temperature would have to be over 32 degrees for the enzyme and acid phosphatase to deteriorate?

A. Well, I think that if it were up to a—we are up to 50 degrees Fahrenheit, then we are getting enzymatic activity and the deterioration takes place. Now, whether that would be 24 hours or whether it would be 48 hours, I couldn't say.

Q. You have told us that the positive-negative acid phosphatase would not necessarily indicate seminal fluid, isn't that correct?

A. Yes, sir, that is correct.

Q. And that would apply to the mouth, the oral cavity, as well as the vaginal area?

A. I have no experience in the oral cavity in that, sir. I speak only to the vaginal vault.

Mr. Wellman: I have no further questions.

Mr. Blink: No further questions, Your Honor.

### *Examination*

By the Court:

Q. Doctor, did I understand you to be saying earlier this morning that there is some natural phosphatase, I guess you have been using, which I assume you are meaning male sperm or an indication of male sperm?

A. No, I am speaking of the—well, if we would look on the ejaculate as being—well, separate it into two components; one the sperms and one the acid phosphatase, the sperm may or may not be present because there are areas where—well, after a vasectomy, there better not be spermatazoa there or there's a problem because that sometimes is used as a birth control method. But the acid phosphatase, if it is there in the seminal fluid, that would be the other component, sperm one, acid phosphatase the other in the ejaculate. Yet, we realize in fine testing in small quantification that in the vaginal tract, there is some material in very low quantities that does give a positive for acid phosphatase.

Now, this does not mean that it is a sensitivity of the test and customarily, what we did was to—your sensitivity of the test was such—is because in using numbers, if we use King Bodansky's units to measure this, these are arbitrary units. We would have—well, 25 is maybe a cutoff point so you may find up to 25 units in the female vaginal area normally without intercourse. But in the male ejaculate, there may be four to five thousand units, so that you see a positive test. And for years, our sensitivity of the test was such that these trivial or small numbers of units did not give a positive. It had to be up in the very high quantities to give a positive.

Q. Did I understand you to say or did I infer correctly that in reading the Medical Examiner's Report you found a positive finding for acid phosphatase?

A. In the mouth, anus and vagina, yes, sir.

Q. And the report simply stated positive, rather than quantities that you and counsel were talking about?

A. Yes, sir, that's correct.

Q. And in making such a report, would a Medical Examiner normally report what you speak of as the natural amount in all the vaginal tracts as a positive?

A. No, sir. Customarily, and in my experience in doing this, our test was not that sensitive to pick up those small amounts. We picked up big, large amounts on this.

Q. And in reading the Medical Examiner's Report, from your experience in seeing similar reports, would you understand that he was referring then to the natural amount that you speak of as being present in all vaginal tracts?

A. I assume that he is referring to the usual quantitative test, which would only be positive when they were rather large amounts. Now, I only assume that, I do not know.

Q. Yes. I am saying based on your experience.

A. Yes, sir, based on my experience.

The Court: Gentlemen, anything further?

Mr. Owens: Yes.

#### *Re-Cross Examination*

By Mr. Owens:

Q. Doctor, are you talking about your experience based upon the knowledge of acid phosphatase in 1968 or upon that knowledge today?

A. Well, I think rather both because I am talking about the positive and negative as the way we did it really through the 60s, but today, we are talking about quantitating it into individual units.

Q. But they didn't do that back in 1968?

A. I think that was done on occasion, but generally speaking the test was positive or negative, yes, sir.

Q. On its face then, of the report, on the face of Dr. Luka's report, you can't tell whether he is talking about just the usual amounts or of a.p. there or higher quantity; just on its face?

A. Just on its face?

Q. Right.

A. No, I cannot.

Q. In fact, Doctor, had you been doing that, what would you have done?

A. I probably would have done just a positive or negative test too, but knowing the basis and background of the test and the laboratories with which I was associated, I would have then known that this had to be not the trivial traces, but a rather large amount.

Mr. Owens: I have nothing further.

The Court: Gentlemen, anything further of this witness?

Mr. Blink: No, Your Honor.

The Court: Thank you, Doctor.

The Witness: Thank you, sir.

(The witness was excused.)

The Court: Mr. County Attorney, did I understand you to tell me informally, along with other counsel, that this would be all of your evidence that you were offering on the—if they would have found the body anyway point?

Mr. Blink: That's correct, Your Honor.

The Court: Do you gentlemen—you can proceed any way you want to. If you have any evidence on this particular point, you could present it now or you can wait until the end of all the State's evidence.

Mr. Owens: Your Honor, we only have two items. We might as well get the issue done now.

The Court: Fine. Okay.

Mr. Owens: We have, Your Honor, a sunrise and sunset central standard time for Des Moines, Iowa. The time the sun came up and set in the evening for December 26, which would be stipulated to as accurate and correct by the State.

Mr. Blink: If that is correct, it may be so stipulated.

Mr. Owens: On that date, Your Honor, the sun set at 4:50 p.m. and I would like to have that marked.

(At this time Defendant's Exhibit 1 was marked for identification by the court reporter.)

Mr. Owens: Also, Your Honor, I would like to enter the testimony—previous trial testimony of Officer Captain Leaming of 1968 where he talks about and gives testimony relating to the weather conditions at the time; the fact that Officer Wissler was searching for the body where Mr. Williams indicated it would be and it took them five minutes to find it when he pointed it out. That's Pages 224, 241 and 242 of the original trial transcript of 1969.

(At this time Defendant's Exhibit 2 was marked for identification by the court reporter.)

Mr. Owens: Those are Exhibits—Defendant's Exhibits No. 1 and 2, Your Honor. One being the sunset-sunrise chart; 2 being the previous trial testimony of Officer Leaming. That's all we have as to this matter, Your Honor.

Mr. Blink: We do not have an objection to those exhibits.

The Court: I'm sorry?

Mr. Blink: No objection to the exhibits.

The Court: They will be received.

Mr. Owens: That's all we have at this time on this issue.

The Court: Very good. Proceed, Mr. County Attorney.

Mr. Blink: Your Honor, the State would call Ed Breese to the stand.

(At this time State's Exhibit M was marked for identification.)

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RULING ON MOTIONS TO SUPPRESS  
EVIDENCE  
POLK COUNTY DISTRICT COURT  
(6/1/77)

The defendant's several motions to suppress, filed 5-6-77 and 5-16-77 went to hearing on 5-31-77. Robert Blink for the State—Roger Owens, John Wellman and Gerald Crawford for the defendant.

The motion of 5-6 seeks to exclude all evidence of conversations with or actions of the defendant on the auto trip from Davenport to Des Moines on 12-26-68. The conversations referred to in Paragraph 2 of such motion, according to counsel, was one of the above conversations. More importantly, the defendant seeks in Paragraphs 3 and 4 to exclude all evidence got at through such conversations and actions of the defendant—that is he seeks to exclude from evidence the corpus delecti itself—evidence of the finding of the body of Pamela Powers and the fact of her death. If defendant's motion is good, the State cannot prove her death in a court of law.

This was precisely the ruling of the U.S. Supreme Court in this case, *Williams v. Brewer* on 3-23-77 (97 S. Ct. 1232) that “neither Williams’ incriminating statements themselves nor any testimony describing his having lead police to the victims body” (that occurred after what the Court terms the “Christian Burial Speech”) can constitutionally be admitted into evidence”. It followed from this ruling that without such conversations and actions of the defendant no evidence could be admitted that the body was even found—that she was in fact deceased.

Yet in that same footnote to the lead and plurality opinion by Justice Stewart the U.S. Supreme Court goes

on to state, "Evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams." Citing *Killough v. U.S.*, 336 F. 2d 929. In the event a retrial is instituted it will be for the State courts in the first instance to determine whether particular items of evidence may be admitted." This Court concludes such theory was likewise the foundation for the statement of concurring Justice Marshall that he doubted the defendant would go free "given the ingenuity of Iowa prosecutors on retrial".

It is on this narrow strand that the State now seeks to admit into evidence that Pamela Powers was indeed deceased.

The burden of proof is on the State to prove by a preponderance of the evidence that the body would have been discovered "in any event".

The information known to the police, excluding the evidence banned by the U.S. Supreme Court, began on 12-24-68 when they were called at or shortly after the disappearance of the 10-year-old girl from the Des Moines Y.M.C.A., the identification of the defendant by three persons as one who [unreadable] covered bundle from the building to his car shortly after the disappearance and placed it in the seat with two legs protruding (seen by one of the three witnesses), and his leaving hurriedly, resisting efforts to stop or talk to him. The car description and its license number were taken. It was known that the defendant was a resident at the Y.M.C.A.



From the news clippings submitted for this period of time by the defendant in connection with his motion for change of venue it can be seen that the abduction of the girl was attended by a great deal of publicity and public reaction. Public help was sought by the police to find her. Before 8:00 a.m. on Thursday 12-26-68 the police knew that clothing thought to belong to the missing girl was found at a highway reststop near Grinnell, Iowa because B.C.I. Agent Ruxlow went to Grinnell at that time to organize an area search for her. The police also knew the defendant's car had been found in Davenport in the a.m. of Wednesday 12-25-68. Radio appeals for volunteers were put out at Grinnell and about 200 people volunteered. They were organized into teams and assigned to areas or grids on detailed maps in a band two to seven miles wide north and south of Interstate Highway 80 in Poweshiek and Jasper Counties and the search started westward at 10:00 a.m. on Thursday 12-26 and was intended to proceed into Polk County likewise. They were instructed to search roads, ditches, culverts, abandoned buildings, etc. They used cars, snowmobiles and were on foot. Agent Ruxlow impressed the Court as an intelligent and organized man with experience in the area of searches. The method used was based on experience. Agent Ruxlow is now Assistant Director of the Iowa B.C.I.

It is clear that the police concluded, with reason, that the abducted girl was taken eastward on I-80 since the very car she was taken in was found in Davenport the next a.m. and that some of her clothing was found near Grinnell at a highway reststop. They thus surmised that she perhaps had been left between Des Moines and that rest-

stop near Grinnell and hence the search westward from Poweshiek County in a band on either side of I-80 into Polk County. The Court concludes also that under these circumstances the public would have been aroused—as evidenced by the large number of volunteers on a Thursday, a workday, and the feeling would be intense. It was then not known that the girl was dead.

Agent Ruxlow was informed that the defendant was thought to be leading the officers to the body and he left the search headquarters at Grinnell to join them at about 3:00 p.m. on 12-26-68. At that time the search teams had gotten about to the Polk County Line. The body in fact was only two to two and a half miles away. Sunset was then less than two hours away with darkness to follow and there was snow, but it was light snow. An inch had been accumulated on the ground nearly a week and one inch was added on the 26th. See Ex. F. By the photos Exs. C and D the body was not snow-covered.

The Court concludes that the searchers would have arrived at the site of the body within a short time of its actual finding, had they continued the search after dark. The culvert in question was itself uncovered and readily visible and in getting down to look into it as the searchers were doing the depression on either side of it would have been obvious—the body was in one of these depressions. Had the searchers stopped due to the snow and the dark the next day was a Friday and a weekend was upcoming—the search would clearly have been taken up again where it left off, given the extreme circumstances of this case and the body would been found in short order.

Regarding the five minute difficulty in finding the body by the officers as it bears on the likelihood of its being found by the searchers—defendant relies on Ex. 2, Officer Leaming's testimony. It appears the defendant was at first sure but subsequently not so sure of the location. It appears the officers would have been trying to follow the defendant's directions as to where the body was located and when the body did not show they apparently concluded that it was nearby instead. The Court concludes that their method of search would have differed from that of the volunteer searchers in this regard. It appears that they may have been looking from the road surface instead of getting down into the ditch to look into the culverts, etc., as were the searchers, from which vantage point the body was visible.

The defendant also relies on what the U. S. Supreme Court calls the "Christian Burial Speech" for a description and prediction of the weather conditions. This Court is found by the U. S. Supreme Court's findings that this speech was a sly and cleaver [sic] psychological ploy, designed for mental coercion of the defendant—thus it cannot be converted here as an accurate statement of meteorological fact and weather prediction. In any case that "speech" was made back nearer to Davenport.

In any case the frozen body would have stayed frozen and deterioration suspended, into April according to Dr. Rose.

In any case according to the U. S. Supreme Court Decision, had the defendant not lead officers to the body as he did, he promised he would tell the whole story on ar-

rival at Des Moines (See page 3 of Justice Stewart's opinion) and defendant's attorney McKnight had told the defendant by phone in the presence of officers, before the auto trip, that he (defendant) was going to have to tell the officers where she (the victim) is when he arrived in Des Moines. (See page 2 of Justice White's dissent).

Accordingly, the Court concludes that the body of Pamela Powers would have been found in any event even had the incriminating statements not been elicited from the defendant and that decomposition would not have taken place so as to alter the medical examination findings of Dr. Luka and thus there held admissible in evidence.

The Court has studied the following additional cases and secondary authorities in arriving at a conclusion of law.

*Weeks v. U. S.*, 232 U. S. 383 (1914).

*Silverthorne Lumbar Co. v. U. S.*, 251 U. S. 385 (1920).

*Nardone v. U. S.*, 308 U. S. 338 (1939).

*Mapp v. Ohio*, 367 U. S. 643 (1961).

*People v. Ditson*, 369 Pac. 2d 714 (Cal. 1962).

*Wong Sun v. U. S.*, 371 U. S. 471 (1963).

*Wayne v. U. S.*, 318 F. 2d 205 (D. C. CIR. 1963).

*Killough v. U. S.*, 336 F. 2d 929 (D. C. CIR. 1964).

*Harrison v. U. S.*, 88 S. Ct. 2008 (1968).

*Keister v. Cox*, 307 F. Supp. 1173 (1969).

*Commonwealth v. Leaming*, 247 A. 2d 590 (Penn. 1969).

*U. S. v. Falley*, 489 F. 2d 33 (2d Cir. 1973).

*U. S. v. De Marce*, 513 F. 2d 755 (8th Cir. 1975).

*U. S. v. Kelly*, 414 F. Supp. 1131 (1976).

Fruit of the Poisonous Tree—a Plea for relevant criteria, 115 U. of Penn. L. Rev. 1136 (1967).

Inevitable Discovery: The hypothetical independent source exception to the exclusionary rule, 5 Hofstra L. Rev. 137 (1976).

Maguire, How to unpoison the Fruit—the 4th amendment and the exclusionary rule, 55 C. Rim. Law, Criminology and Police Science 307 (1964 43 ALR 3d 385).

The Inevitable Discovery Exception to the Constitutional exclusionary rule, 74 Columbia L. Rev. 88 (1974).

Pitler, the Fruit of the Poisonous Tree, 56 Cal. L. Rev. 579 (1968).

*Roberts v. Ternullo*, 18 CR. L. Reporter, 2415 (1976).

A correlary to this situation are the cases dealing with the admission of identification testimony headed by *Simmons v. U. S.*, 390 U.S. 377. This case was interpreted and applied by *State v. Ash*, Iowa, 244 N. W. 2d 812. These cases also involve the 6th amendment's right to counsel and the test there is whether the questioned identification procedure was so "impermissibly suggestive so as to give rise to a very substantial likelihood of irreparable misidentification." The *Ash* case speaks of "independent origin" of the in-court identification which seems to be instructive as to the standard to be used in determining whether the finding of the body in this case, other than by the defendant's leading to it, can be said to be suffi-

ciently independent of the defendant's actions which are now stricken from the evidence.

The Wayne and Killough cases above seem to apply a "but for" test—can the State show by evidence that this is not a situation where the body would not have been found "but for" the actions of the defendant. In Harrison above cited the "but for rule" seems to be accepted by the U.S. Supreme Court; however, in *Brown v. Illinois*, 422 U.S. 590 the U.S. Supreme Court seems to reject the "but for rule" by saying that there was no automatic yes or no answer—rather asserting that the admissibility depends upon the totality of the circumstances.

Whether one considers the totality of the circumstances or the "but for rule" this Court concludes that the body would have been found by sources independent of the defendant before decomposition had taken place. In any event, the U.S. Supreme Court in this very case, *Williams v. Brewer*, relies on the Killough case, which in turn relies on the Wayne case. The fact situation here is stronger than either of those cases in this Court's opinion.

Accordingly, Paragraph 1 of such motion is sustained as to statements or actions of the defendant after the so-called "Christian Burial Speech" and throughout the remainder of the automobile trip from Davenport to Des Moines; Paragraph 2 is sustained. Paragraph 3 is sustained except the words "the reason for" in line 1 in that the Court does not understand their application here. Paragraph 4A is sustained as to photographs such as those in evidence at the hearing taken on 12-26-68 and Paragraphs 4 B, C and D are denied.

As to the defendant's motion to suppress filed 5-16, Division I:

The defendant seeks to suppress the search of the defendant's room at the Y.M.C.A. and the seizure of items therefrom under the search warrant Ex. M, dated 12-25-68. The burden of proof is on the defendant who attacks the warrant.

The warrant information on its face shows ample probable cause. However, the defendant is entitled to attack verity of facts recited explicitly or implicitly in the warrant, being the date of the search and seizure. See *State v. Boyd*, 224 N. W. 2d 609.

The defendant proved, contrary to the testimony of State's witnesses, that a search was conducted on 12-24-68, not 12-25 as recited in the warrant. See Exs. 3, 4, 5 and 6, which show clearly that officers were acting in relation to things seized from the defendant's room on 12-24-68. The Court cannot accept that all such documents were all misdated the 24th instead of the 25th. Although on 12-24-68 exigent circumstances were compelling such as to justify a warrantless entry in that there was immediate need to gain any clue as to the destination of the known abductor and thus the victim, yet there is no evidence whatsoever at all that such was the motive for the entry to the defendant's room without a warrant on 12-24-68. Granted that the State's witnesses' memory as to their actions and motives is being revived after 8 and a half years, yet this Court cannot act on such assumptions—it is bound by the evidence. The fact that probable cause was present all along and would have been likewise adequate on 12-24-68 cannot be held to validate the re-entry with a search war-

rant after the prior warrantless entry and search was conducted.

Accordingly, the defendant's motion to suppress, Division I, is sustained.

As to the defendant's motion to suppress of 5-16-77 Division II:

The defendant seeks to suppress the body hair samples obtained from the defendant on or about 12-26-68 in the Des Moines City Jail. The simple answer to this motion is that the defendant was asked directly and simply, in the manner and to the extent testified to by the officers, to give the hair samples and he consented. There was no compulsion involved in any form—the Court finds the defendant knowingly waived any constitutional right he may have had to refuse such samples.

Accordingly, such motion, Division II, is denied.

As to the defendant's motion to suppress of 5-16-77,

Division III:

The defendant has the burden of proof in this motion to suppress evidence seized from the defendant's car in Davenport, Iowa by search warrant, Ex. O, of 12-26-68. The information for the search warrant has insufficient information to show probable cause and would thus be subject to attack under *State v. Liesche*, 228 N. W. 2d 44, if it were a contemporary warrant. However, the warrant is 8 and a half years old and is to be tested by the law ante-dating the statutory amendment applied in *Liesche*. There would be no way for the police and Magistrate to be aware of the statutory amendment which was



not law until later, 7-1-69, and they could only utilize the existing law which authorized issuance of warrants on the basis of sworn but unrecorded or unsummarized information. See *State v. Spier*, 173 N. W. 2d 854, *State v. Lampson*, 260 Iowa 806. The information given the Magistrate by Officer Yeager constituted ample probable cause for the warrant. The seizure alone without search of the auto for security purposes prior to the search warrant does not constitute a warrantless search or otherwise invalidate the warrant. The search was conducted under the warrant after the defendant was in custody.

See generally *State v. Anderson*, 148 N. W. 2d 414 and *State v. Vallier*, 159 N. W. 2d 406.

Accordingly, the motion aforesaid, Division III, is denied.

/s/ J. P. Denato, JUDGE

CLERK: Mail to

Roger Owens, Offender Advocate  
Gerald Crawford, 1021 Fleming Bldg.  
County Attorney Rob Blink

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DEFENDANT'S EXHIBIT 2, SUPPRESSION  
HEARING: TESTIMONY FROM 1969 SUP-  
PRESSION HEARING

[Printer's Note: Pages 224, 241-42 of Original Transcript]

A. Well, Mr. Williams was very talkative, and he was asking me who we had talked to that were friends of his, if we talked to the reverend from the church, if we talked to Mr. John Searcy, if we had checked for fingerprints in his room at the YMCA, and we discussed religion. We discussed intelligence of other people. We discussed police procedures, organizing youth groups, singing, playing a piano, playing an organ, and this sort of thing.

Eventually, as we were traveling along there, I said to Mr. Williams that, "I want to give you something to think about while we're traveling down the road." I said, "Number one, I want you to observe the weather conditions, it's raining, it's sleeting, it's freezing, driving is very treacherous, visibility is poor, it's going to be dark early this evening. They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched also.

Q. (By Mr. Hanrahan) Were the cars parked side by side?

A. Yes, sir.

Q. Have your windows down and talking through the windows?

A. Yes, sir.

Q. Okay.

A. Wissler proceeded that way and we went on back the other way and came around, and the BCI cars also came around back there and south and then back.

Q. The way you did?

A. Yes, sir.

Q. Did you see Wissler's car when you got down here?

A. Yes, sir.

Q. Where was he?

A. Well, he was a mile and a half west of that intersection, had his car parked on the north side, which would be the wrong side of the road. He was heading east, and had his spotlight shining down into the ditch, had his window rolled down.

Q. Did Mr. Williams say anything at that point?

A. Yes, sir, he did.

Q. What did he say?

A. He said, "He's found her. That's exactly where she is, right there, right where he's at."

Q. Now this spot is one and a half miles west from this intersection?

A. Yes, sir.

Q. And these roads are two miles apart, I believe you said?

A. Yes, sir.

Q. So that would be about three-quarters of the way down there?

A. Right.

Q. Then where did you go, Captain?

A. Well, I talked to Wissler, he pulled away from there.

Q. Wissler left that spot?

A. Yes, sir, pulled up side by side to us, heading east, us heading west. And I asked him if he saw anything there. He said no. And I said, "Well, that's where Mr. Williams says that she is." So we pulled right over by that spot and stopped and Wissler and the BCI cars came up there and they got out and started searching on foot. They searched for approximately five minutes and Mr. Williams said he thought if he went on up to the intersection and turned around and came back he able to pinpoint it a little closer, that he felt they should have found her by now. And this we started to do, but just as we started to proceed, why the officers hollered and shined their flashlight and stated that they had found her.

Q. Did you get out of your car at that time?

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HABEAS HEARING

[Printer's Note: Pages 8-14; 20-21 of Original Transcript]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

No. 80-450-D

ROBERT ANTHONY WILLIAMS.

*Plaintiff,*

vs.

DAVID SCURR, WARDEN; and THE ATTORNEY  
GENERAL OF THE STATE OF IOWA,

*Defendants.*

2nd Floor Courtroom  
U. S. Courthouse  
East 1st and Walnut Streets  
Des Moines, Iowa  
Monday, August 3, 1981

The above-entitled matter came on for hearing at  
10:00 a.m.

BEFORE:

THE HONORABLE HAROLD D. VIETOR, Judge  
APPEARANCES:

ROBERT BARTELS, Attorney at Law, and SARAH  
MEGAN, Student Legal Intern, Prisoners Assistance Clin-  
ic, College of Law, University of Iowa, Iowa City, Iowa  
52242, appearing on behalf of the Plaintiff.

THOMAS D. McGRANE, Assistant Attorney Gen-  
eral, 2nd Floor Hoover Building, Des Moines, Iowa 50319,  
appearing on behalf of the Defendants.

• • •

## GERALD CRAWFORD,

called as a witness by the Plaintiff, being first duly sworn by the Clerk, was examined and testified as follows:

*Direct Examination*

By Ms. Megan:

Q. What is your name?

A. Gerald Crawford.

Q. What is your occupation?

A. I'm an attorney licensed to practice law in the State of Iowa.

Q. Were you appointed to represent Mr. Williams in the 1977 new trial?

A. Yes.

Q. In preparation for the trial, did you examine any photographs of the scene where Pamela Powers' body was found?

A. Yes.

Q. Where did you see these photographs, Mr. Crawford?

A. I believe that we viewed them in the County Attorney's Office. The County Attorney's Office at that time had several different locations. It would have either been in the Polk County Courthouse on the 4th Floor, which was the main office, or what they call their Major Offense Bureau, which is in the Des Moines Savings & Loan Building, I believe on the 11th Floor.

Q. What did you see when you went to the County Attorney's Office to see these photographs?

A. The photographs were contained either in several large envelopes or a box, I'm not certain which, and we looked through the photographs at that time; maybe on more than one occasion.

Q. How was it that you were permitted to see this box with these envelopes?

A. They were made available to us by the County Attorney. We had requested an opportunity to view all of the police reports that had been made at the time this whole thing occurred back in 1968, and Judge Denato had ordered that we be allowed to have an opportunity to review the police reports, and we were allowed to see the photographs, as well.

Q. Did you believe the envelopes or the box to contain all of the physical evidence that was available to the prosecution at that time?

A. I had no reason to believe otherwise.

Q. What was contained in these files?

A. Well, there were a number of photographs, as I indicated. Are you referring to all of the evidence, or just the photographs?

Q. What was, in total, contained in the file?

A. We had an opportunity to look at the police reports, as I indicated, photographs, certain physical items of evidence, clothing, things of that nature.

Q. How many photographs were contained in the file?

A. Many; dozens.

Q. Did you look at all of the photographs?

A. Yes.

Q. What did—

A. On more than one occasion.

Q. What did the photographs depict?

A. The photographs showed the scene where the body was found, the road area leading to the scene. I think there were photographs depicting a vehicle that belonged to Mr. Williams. There were photographs from the YMCA.

I believe there were additional photographs that had been taken of the body of Pamela Powers once she had been returned to Des Moines to the Medical Examiner's Office.

Q. Mr. Crawford, when did you see these photographs? When did you view the file?

A. Well, early on in the pretrial proceedings, there were a number of issues that needed to be explored as we worked our way toward the pretrial in this matter; and a base that we used to determine dividing up areas of responsibility was the availability of this material.

In other words, once we were able to go through the material, we were able to start to know what we needed to do to prepare for trial, so it was very early on in the pretrial proceedings.

Q. So it was prior to the Motion to Suppress Hearing?



A. Yes.

Q. Did you know at that time when you viewed the file that inevitable discovery would be an issue at the Motion to Suppress Hearing?

A. Yes.

Ms. Megan: Your Honor, may I have permission to approach the witness?

The Court: Yes.

Q. (By Ms. Megan) I'm handing you, Mr. Crawford, Exhibit 1. Mr. Crawford, had you seen that photograph prior to the Motion to Suppress Hearing?

A. No.

Q. Are you absolutely certain that you didn't see this photograph?

A. Absolutely.

Q. I'm handing you, Mr. Crawford, Exhibit No. 2. Had you seen Exhibit No. 2 prior to the Motion to Suppress Hearing?

A. No.

Q. Are you certain that you did not see Exhibit No. 2?

A. Yes.

Ms. Megan: Your Honor, I would like you to take these exhibits at this point, as it will be helpful for the argument.

Q. (By Ms. Megan) Just for the purposes of the record, Mr. Crawford, I would like to ask you a few ques-

tions about Mr. Wellman. Was Mr. Wellman also appointed to represent Mr. Williams in the 1977 new trial?

A. John Wellman from here in Des Moines, yes.

Q. Was Mr. Wellman blind at that time?

A. Yes. He's been blind since a hunting accident when he was in high school.

Ms. Megan: I don't have any further questions.

The Court: Any cross-examination?

*Cross-Examination*

By Mr. McGrane:

Q. Do you know what the date of the Motion to Suppress was?

A. No.

Q. How soon before the Motion to Suppress did you look at this police file?

A. I'm not certain.

Q. An approximation?

A. At least days before, and probably a week or two before.

Q. Do you know how many pictures there were of the scene with the body in it that you looked at?

A. You're talking about where the body was located?

Q. Yes; that included the body itself.

A. I don't remember with any clarity how many photographs there might have been. I remember that there were photographs at the scene depicting the body.

Mr. McGrane: That's all I have, Your Honor.

The Court: Do you have any redirect?

Ms. Megan: No, Your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Do you have further evidence to offer?

Mr. Bartels: No, Your Honor.

The Court: Does the State have evidence to offer?

Mr. McGrane: No, Your Honor. The trial record, of course, is a part of the record in this case.

The Court: It's before the Court. Thank you.

Mr. Bartels.

Mr. Bartels: Your Honor, I have one more stipulation which I wanted to wait to enter until Mr. Crawford had testified.

Mr. McGrane and I would stipulate that if Roger Owens, who was Mr. Williams' third defense lawyer at the 1977 trial, were called to testify, he would testify that he also looked at the prosecutor's file, including the photographs and that he did not see in those photographs Exhibits 1 and 2 that have been introduced.

Mr. McGrane: I would rather stipulate that he does not recall seeing them. I don't know which I agree to.

Mr. Bartels: I think we agreed to what I just said.

Mr. McGrane: I won't back down. It's not a major point. I will agree he would testify he did not see them.

The Court: All right.

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The Court: I would like an answer to my question. Go ahead and continue, but I would like to have clarified exactly how this Federal Habeas Corpus Court can now evaluate this claim on the basis of apparently, as I understand it, newly discovered evidence; that it hasn't yet been explained to me when the Plaintiff first learned of these photographs, or how, or anything like that.

Ms. Megan: Your Honor, the Plaintiff, Petitioner, first learned of these photographs since the beginning of this proceeding. The photographs were not available, as Mr. Crawford testified, at the time of the Motion to Suppress Hearing, or at the time of the first trial; apparently through no fault of the Defense Counsel.

The Court: How did they surface? Is there anything in the record about that?

Mr. Bartels: Your Honor—

The Court: All I know is suddenly we have photographs we didn't have before, and I'm not being told what the story is. How did these photographs surface?

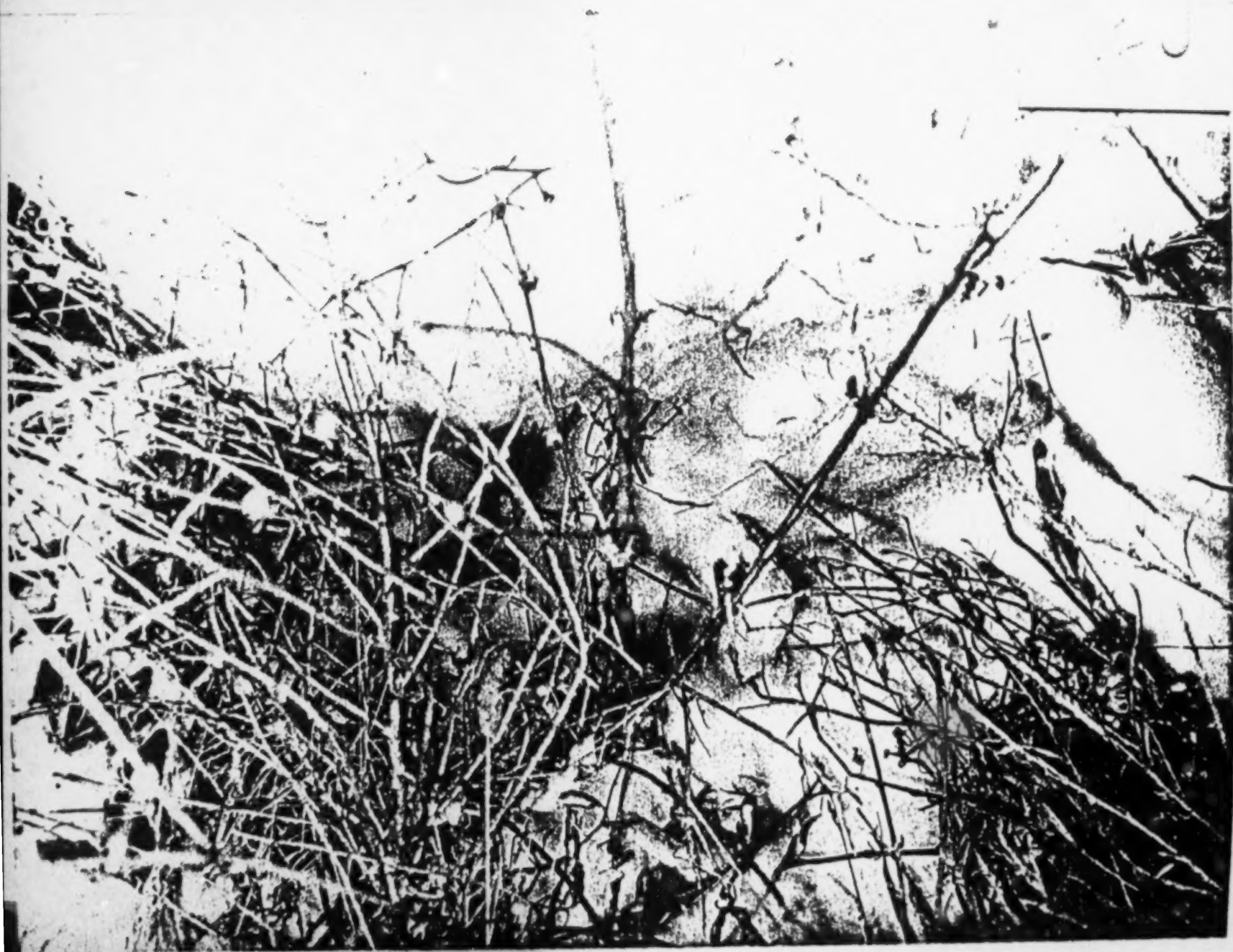
Mr. Bartels: If I can make a statement for the record, Your Honor, I'm really not quite sure exactly when this occurred, but it was early this year. In preparing one of the memoranda, we began to look at the pictures that we had, realized from the testimony of one or two of the police officers at the Suppression, that we didn't have all of the pictures, that there were some other pictures taken at the scene; and, really, just out of an access of—what seemed like an excess of caution at the time, we thought we ought to at least see what they looked like, and I asked

an intern named Chris Jackson to go to Des Moines in an attempt to locate the rest of those pictures.

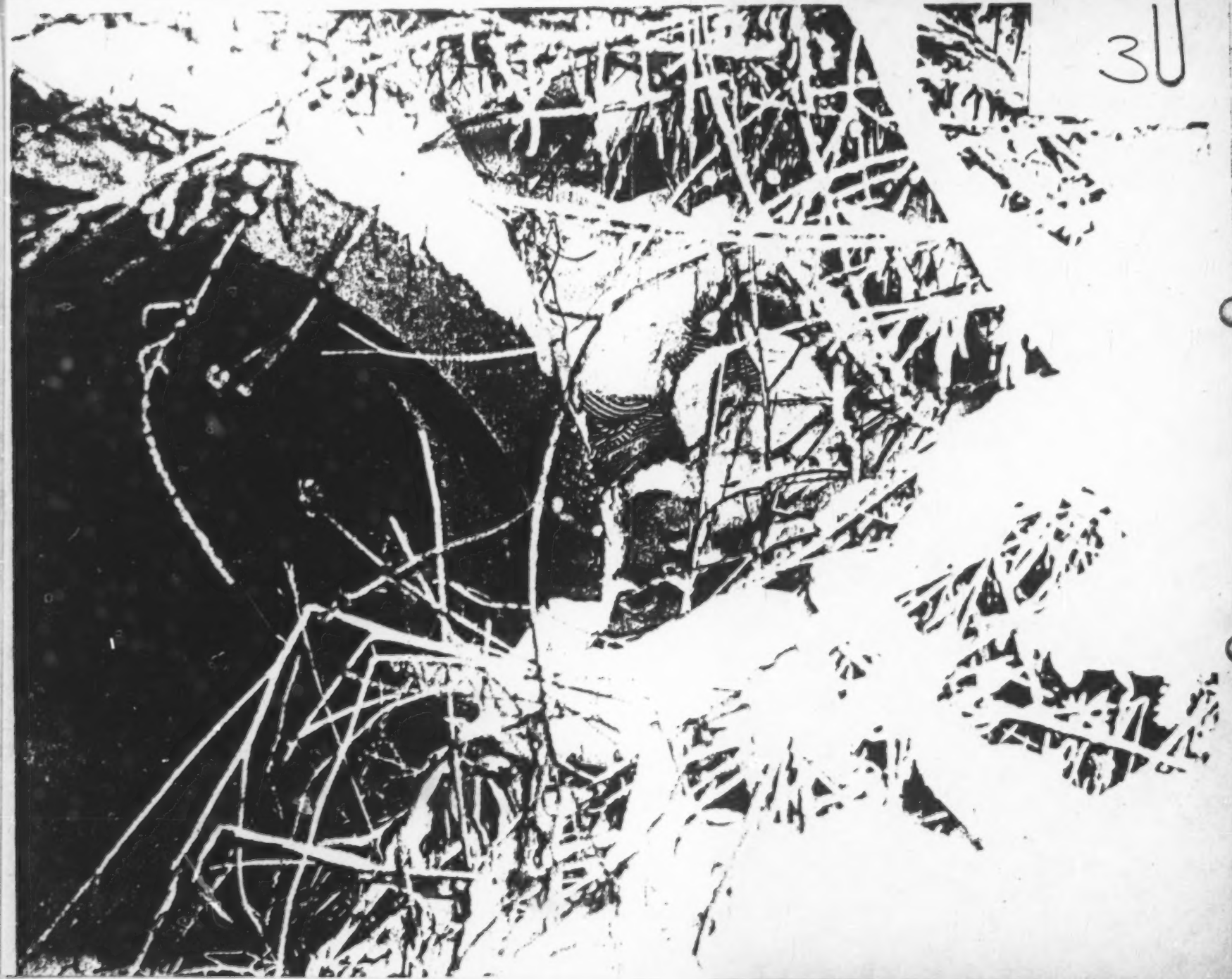
He went to the Courthouse in Polk County, went down in the tombs, and looked in a box of evidence that included the kinds of items Mr. Crawford was talking about; clothing, car set, a lot of slides, and so forth; and included was a package of photographs.

To say that they were organized in any way would be overstating it; but included in those photographs were Exhibits 1 and 2 that have been introduced here.

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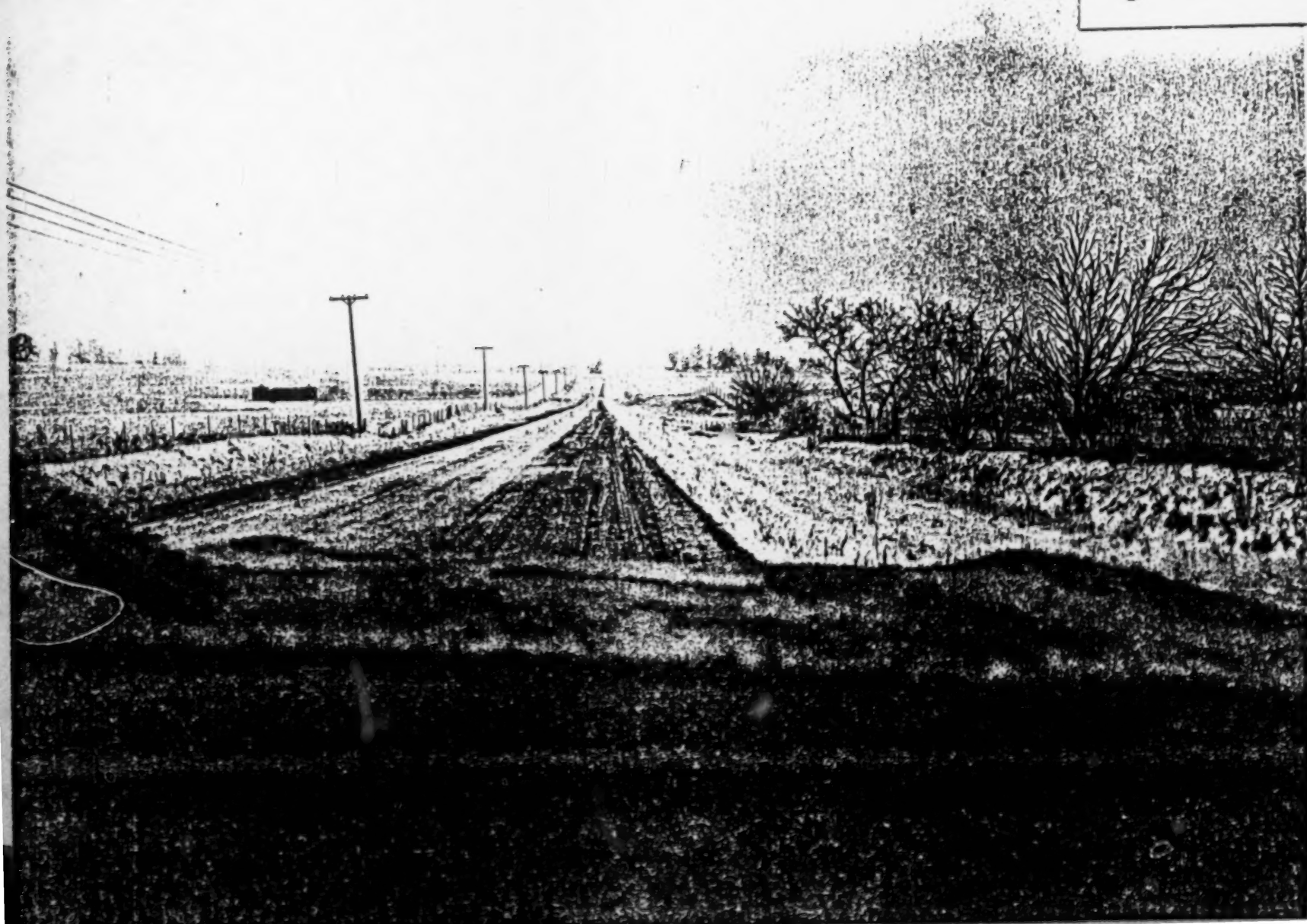


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BUREAU OF CRIMINAL INVESTIGATION  
Department of Public Safety  
HABEAS CORPUS EXHIBIT 11

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(PRINTER'S NOTE: The original copy, from which this is taken, has been trimmed, both right and left sides, so there are words missing. We indicate missing words with use of a dash (—).)

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Investigated: December 26, 1968; Date: January 6, 1969; Typed: 3-3-69; Typed by cm; File Number, 681353; —Case: Homicide—Pamela Powers—White Female—Age ten years—December 24, 1968, Des Moines, Iowa; Petitioner's Deposition Exhibit No. 1, LP 7-16-81; Nature of Case, Homicide, Class No. 7; Reference: Original Report by Dan Mayer, Special Agent; Report made by: Thomas R. Ruxlow, Special Agent; Approved by [initials].

SUPPLEMENTAL REPORT

On December 25, 1968 the reporting agent received a call from State Radio advising this reporting agent to meet with Special Agent Mayer at the Grinnell Police Department on December 26, 1968 to assist him in the investigation of the above captioned case.

On December 26, 1968 at approximately 8:00 A.M. this reporting agent met with Special Agent Mayer at the Grinnell Police Department and was instructed by Special Agent Mayer to organize a search covering Poweshiek and Jasper counties approximately seven miles north of the Interstate 80 and seven miles south of Inter-

state 80 searching for the victim PAMELA POWERS. This reporting agent with the assistance of approximately two hundred volunteers conducted a search covering seven miles either side of the interstate through Jasper and Poweshiek Counties.

At approximately 3:00 P.M. December 26, 1968 this reporting agent and Special Agent Mayer and Special Agent John Jutte followed Des Moines detectives who had the suspect in their car from the Grinnell interchange to the Mitchellville interchange on interstate 80 where a search was conducted for the body of the deceased, PAMELA POWERS. The body was located by the reporting agents approximately two miles south of the Interstate 80 at the Mitchellville interchange in a ditch next to a culvert.

— PENDING —

FACTS—

On December 25, 1968 at approximately 10:00 P.M. this reporting agent was telephonically contacted by State Police Radio at Cedar Falls and was given the message from So—sor Stump directing this reporting agent to report to the Grinnell Police Department at approximately 8:00 A.M. December 26, 1968 to assist Special Agent Mayer in the search for PAMELA POWERS.

On December 26, 1968 this reporting agent reported to the Grinnell Police Department at 8:00 A.M. and was subsequently met by Special Agent Mayer and this reporting agent was brought up to date on the details of this case. At the direction of Special Agent Mayer this reporting agent organized a search of an area on the west

the countyline, of Jasper on the east the county line of Poweshiek County and on the north seven miles north of Interstate 80 or Poweshick and Jasper County and on the south a line of seven miles south of Interstate in Poweshiek and Jasper County. It is the understanding of this reporting that a call had been put out for volunteers on December 25, 1968 to assist in the search of PAMELA POWERS and the people started arriving at the Grinnell Police Department at approximately 8:00 A.M. December 26, 1968 in response to a plea for volunteers. From approximately 9:00 A.M. to 3:00 P.M. searchers were sent out in teams from the headquarters at the Grinnell Police Department to designated areas in which they were to search. Some of these teams covered more than one area. Volunteers with snow-mobiles covered Interstate 80 both sides both north and south ditches of Interstate 80 and a median strip from approximately highway 146 east to the Kellog interchange. It is felt by the reporting agent that a search was necessary in this area due to the fact that clothing identified as being the property of Pamela Powers was found in the Grinnell interchange rest area in the eastbound side. Part of this area including approximately one hundred and eighty square miles of Poweshiek County and an area of two hundred and seven square miles of Jasper County were searched by the volunteers covering all roads, culverts, abandoned buildings and anyplace where a small person could be concealed with negative results.

At approximately 3:00 P.M. Special Agent Mayer and this writer met Special Agent Jutte at the Grinnell interchange where Special Agent Mayer and this writer were



brought to date on the details of the case by Special Agent Jutte.

Special Agent Jutte advised that the Des Moines detectives had the suspect in custody and were enroute from Davenport to Des Moines. I was instructed to follow the Des Moines detective car from Grinnell Interchange to Des Moines. The car containing the Des Moines detectives and the suspect started west on Interstate 80 with this reporting agent directly behind the vehicle, carrying the two Des Moines Detectives and the suspect, ANTHONY WILLIAMS. The car containing the suspect and the Des Moines detectives arrived at the interchange exited off the next interchange and came back over the interstate and were east bound on interstate 80 where they stopped at the Grinnell interchange rest area. In the car containing the detectives and ANTHONY WILLIAMS stopped this reporting agent pulled up directly aside their car and the Des Moines detective Arthur W. Nelson and this reporting agent went up to the walk to the rest area with an attendant and asked the attendant—tional clothing, in particular a blanket had been found. The attendant replied, no—clothing or blanket had been found and that the items previously found had been turned in to the Grinnell Police Department. The Des Moines detective, Nelson got back into the—with another detective and ANTHONY WILLIAMS and proceeded east on Interstate 80 with—agent directly behind their vehicle in this agent's state vehicle. At the Grinnell interchange the Des Moines car exited off the ramp over the Interstate 80 and was again west bound—Interstate 80 with the car containing Special Agent Mayer and Special Agent Jutte—behind the Des Moines car and this reporting agent directly behind the

agents' car—neared the Mitchellville Interchange the car containing Des Moines Detectives and then slowed down and exited off of the Interstate with Special Agents Mayer and Jutte behind the Des Moines Car and this reporting agent directly behind the agents' car. At the Mitchellville interchange the Des Moines detective car started north for a short ways then stopped—around and went south. I was directed by Special Agent Mayer to follow the Des Moines car south over Interstate 80. As we passed the filling station south of Interstate 80—the detective car stopped and Detective Nelson came back and asked that I in form Special Agent—and Special Agent Jutte to turn around and follow them as he (ANTHONY WILLIAMS) made a mistake and it was this way. This reporting agent so informed Special Agent Mayer and Special Agent—Jutte and they turned around and headed south over Interstate 80—first mile road south of Interstate 80 where a right turn heading west was made by—Des Moines detective car and this reporting agent's car. We went approximately a mile and a half where the Des Moines Detective's car slowed to a stop with this reporting—in his car directly behind him. Special Agents Mayer and Jutte pulled their car directly—began a search of the ditch for the body of PAMELA POWERS. A thorough search of the ditch was conducted by the State agents on both north and south sides of the road with negative results. The Des Moines detective Capt. Leaming came back and informed the agents that the suspect (ANTHONY WILLIAMS) had apparently made a mistake and they would go south yet another mile in the search for the body of PAMELA POWERS. The search was directed exactly one mile south of the spot that we had searched and the three cars, one Des Moines detective car and two state cars pulled up



to the ditch which was very similar to the one that we had previously searched and the three state agents, Special Agent Mayer, Special Agent Jutte and this reporting agent proceeded to search the ditch. The search had just begun when Special Agent Jutte found the body of the deceased, PAMELA POWERS. This was approximately 5:45 P.M. December 26, 1968.

It was decided by Capt. Leaming and Special Agent Mayer that a call should be out for Special Agent Newquist, Assistant Director Barton, Director Blair and Supervisor Stump to meet the agents at the spot where the body of the victim, PAMELA POWERS was found. Capt. Leaming also requested that the Des Moines Police Department Ident Squad also be contacted. Special Agent Jutte and Mayer went back to the Mitchellville interchange to the station to await the arrival state agents and identification personnel from the Des Moines Police Department so that they could be guided to the spot. IHP #294, two Des Moines detectives, the suspect, ANTHONY WILLIAMS, waited at the scene for the arrival of the previously mentioned personnel.

It is noted that the car containing the two Des Moines detectives and the suspect ANTHONY WILLIAMS was parked well ahead of the location where the body of the deceased, PAMELA POWERS, had been found.

Shortly after the call was put out for the additional state agents and Identification personnel from the Des

Moines Police Department they started arriving and the crime scene was processed by identification personnel of the Des Moines Police Department shortly after this reporting agent left the scene.

ENCLOSURES:

Exhibit #1 A County map of Poweshiek County with areas marked off for the search of the victim, PAMELA POWERS, in the above mentioned case.

Exhibit #2 A County map of Jasper County with areas marked off which had been searched by volunteer searchers in the search for PAMELA POWERS.

Submitted by Thomas R. Ruxlow,  
Special Agent

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HABEAS CORPUS EX. 12  
BUREAU OF CRIMINAL INVESTIGATION  
Department of Public Safety

Investigated: December 25, 26, 1968; Of Case: Homicide, Pamela Powers, W/F, Age Ten Years, Des Moines, Iowa, December 24, 1968; Petitioner's Deposition Exhibit #2, 7-16-81; Date: June 26, 1969, Typed: 6/27/69; Typed by: vi; File Number, 681353; Nature of Case: Homicide, Class, #7; Report Made By: Daniel L. Mayer, Special Agent; Approved: [initials].

Ten year old PAMELA POWERS was abducted from the YMCA in Des Moines, Iowa and her semi nude body later found in a roadside ditch near Mitchellville, Iowa. ROBERT ANTHONY WILLIAMS was subsequently arrested, charged and convicted for the first degree murder of PAMELA POWERS. ROBERT ANTHONY WILLIAMS, BCI #164 602, has been sentenced to a life term at the Iowa State Penitentiary.

— CLOSED —

FACTS—

This investigation was conducted at the request of Des Moines Chief of Detectives (Captain) Cletus Leaming and at the direction of Warren D. Stump, Supervisor of Agents, Iowa Bureau of Criminal Investigation.

At 1:30 P.M., December 25, 1968, the reporting Agent was contacted by Supervisor Stump and advised certain articles of clothing believed to be those of PAMELA POWERS had been found at the rest area for the east

bound lane approximately one mile west of the Grinnell interchange near Grinnell, Iowa. The reporting agent was further advised PAMELA POWERS was believed abducted from the YMCA in Des Moines, Iowa the previous day by ROBERT ANTHONY WILLIAMS, BCI #164 602, negro male, five feet eight inches, one hundred eighty pounds, black hair, dark brown eyes, date of birth March 19, 1944. The reporting Agent was further advised a warrant for child abduction had been issued against WILLIAMS at that time. The reporting Agent was directed to proceed to Grinnell, Iowa to assist in a search for PAMELA POWERS.

At 1:45 P.M., December 25, 1968, the reporting Agent was picked up at his residence in Keota, Iowa by Iowa Highway Patrolman Virgil Berhrens, (IHP #315) and transported to Grinnell, Iowa. At 2:45 P.M., the reporting Agent met with Grinnell Chief of Police Bill Peters, Des Moines Detective Spect, Special Agents William Faust and Vern Glossup (FBI) and Iowa Highway Patrolmen Kaylor (IHP #223), Law (IHP #362), Behrens (IHP #315) and Jasper County Deputy Sheriff Allan Wheeler and James Verwers. At this time the reporting Agent was briefed on the local articles of clothing which were preserved for the arrival of Special Agent Newquist of this Bureau. The reporting Agent was advised Iowa Highway Patrol officers had driven both sides of interstate highway 80 from Des Moines, Iowa to Iowa City, Iowa in an unsuccessful search for additional items.

A search was organized with its headquarters in Grinnell, Iowa to search for the body of PAMELA POWERS. This search was made also with the assistance of volunteers in the — PAMELA POWERS could be found alive.

The reporting Agent was further advised by Des Moines Police Detective Speck that the POWERS girl had been missing at approximately 1:30 P.M., December 24, 1968 and further that PAMELA POWERS is decribed as white female juvenile, ten years, four foot nine inches, sixty three pounds, dark blond hair, and blue eyes.

The search continued until approximately midnight on December 25, 1968. Also during this time FBI Agents Faust and Glossup, Grinnell Police Sgt. Butcher and Iowa Highway Patrol Kaler were making interviews of persons stating they had seen a vehicle similar to that described of WILLIAMS. The search was resumed at 3:00 A.M., December 26, 1968 in Grinnell, Iowa, with additional volunteers, the Newton Police auxilliary, additional Highway Patrol officers from District #11, District #13 and District #1.

At 8:00 A.M., December 26, 1968, Special Agent Ruxlow met with the reporting Agent at the Grinnell Police Department and assumed leadership of a search covering Poweshiek and Jasper Counties approximately seven miles north of Interstate 80 and seven miles south of Interstate 80, at the request of the Reporting Agent.

At approximately 3:00 P.M., Special Agent Ruxlow and the reporting Agent met Special Agent Jutte at the Grinnell Interchange at which time Special Agent Jutte advised of the -- of ROBERT ANTHONY WILLIAMS in Davenport, Iowa.

Special Agent Jutte and the reporting Agent in one car and Special Agent Ruxlow in another car followed the

car containing Des Moines Police Captain Leaming and Detective Agent Nelson and suspect ROBERT ANTHONY WILLIAMS. WILLIAMS eventually led the Des Moines Police two BCI cars and Iowa Highway Patrol Officer Jack Whissler (IHP #294) to a scene located approximately one mile south and one and one half miles west of Mitchellville, Iowa, at location Special Agent Jutte found the body of the deceased PAMELA POWERS at approximately 5:45 P.M.

Director Blair, Assistant Director Barton, Supervisor Stump and Special Agent Newquist were telephonically contacted by Des Moines State Police radio and requested to — investigators at the location of the body of the victim. Also contacted were the identification officers of the Des Moines Police Department. Upon the arrival of these personnel and photographing of the scene, the body was removed to a funeral home in Mitchellville, Iowa, for removal to Des Moines, Iowa for autopsy.

The reporting Agent was subsequently advised by Des Moines Police Captain Leaming that the autopsy conducted by Polk County Medical Examiner Leo Luka determined PAMELA POWERS had died of suffocation, after having had sexual penetration in the anus, mouth and vagina.

ROBERT ANTHONY WILLIAMS was subsequently tried and convicted in Polk County District Court of first degree murder. WILLIAMS was given the mandatory life sentence to be served at the Iowa State Penitentiary in Fort Madison, Iowa and was received there to begin the sentence on May 15, 1969.

Submitted by Daniel L. Mayer,  
Special Agent

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HABEAS EXHIBIT 13

(Testimony of Des Moines Police Officer Carroll  
Dawson at 1969 Suppression Hearing)

[Printer's Note: Pages 188-89 of Original Transcript]

. . .

the day we're talking about.

A. December 26th, 1968, yes, sir.

Q. Now with whom did you go to this area?

A. Sergeant Gerald Limke and Technician—at that time Technician Charles Soderquist from my Bureau.

Q. Is it one of the duties of the Ident Bureau to take photographs?

A. Yes, sir, it is.

Q. When you arrived at the area, did you observe the body of Pamela Powers?

Mr. McKnight: Just a moment. So I won't have to just keep objecting, all the testimony relative to what was done in that area as the results of Leaming's call is objected to for all the reasons heretofore urged, then I won't have to continue to make them.

The Court: Agreeable. Same ruling.

A. I did see the body of Pamela Powers at that scene, yes, sir.

Q. And where was the body when you first saw it?

A. It was lying next to a cement culvert on the north side of the road that we were on, later known to me to be 54th Street in that area, about I would estimate twenty-five feet or so from the roadway itself in a ditch.

Q. And would you describe this body as you saw it?

A. Yes, sir. When we first arrived, it was partially covered with snow, partially nude except for the undershirt and sweatshirt on the upper part of the body. The rest of the body was nude. After the first initial photograph was taken, showing partially covered with snow, we did brush the snow away and take additional photographs.

Q. Lieutenant, I hand you what has been marked State's Exhibit K, and ask you to state what that is, if you know.

A. Yes, sir. This is the sweater or sweatshirt taken from Pamela Powers, from the body.

Q. Was it on the body at the time you first saw it?

A. Yes, sir.

Q. Did you later take possession of this Exhibit K?

A. Yes, sir, I did.

Q. And where was that?

A. At the Westover Funeral Home.

Q. I show you State's Exhibit L, and ask you to state what that is, if you know.

A. Yes, sir. This is the undershirt from the body of Pamela Powers, also taken from her body at the Westover Funeral Home.

Q. Was that undershirt on her body when you first saw it?

A. Yes, sir.



Q. Did either you or Sergeant Limke take some pictures at the scene?

A. On December 26th, the evening of December 26th, the \* \* \*.

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HABEAS CORPUS EX. 16  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil No. 80-450-D

ROBERT ANTHONY WILLIAMS,  
Petitioner,  
vs.

DAVID SCURR, Warden of the Iowa State  
Penitentiary at Fort Madison, Iowa,  
Respondent.

DEPOSITION OF THOMAS R. RUXLOW,  
taken by the Petitioner before Lou Anne Parker, Certified  
Shorthand Reporter and Registered Professional Reporter  
in and for the State of Iowa, commencing at 10:45 a.m.,  
Thursday, July 16, 1981, at the 2nd Floor, Hoover State  
Office Building, Des Moines, Iowa.

APPEARANCES

BOB BARTELS, Prison Assistance Clinic, University  
of Iowa College of Law, Iowa City, Iowa 52240, appearing  
on behalf of the Petitioner.

SARAH MEGAN, Prison Assistance Clinic, Student  
at University of Iowa College of Law, Iowa City, Iowa  
52240, appearing on behalf of the Petitioner.

TOM McGRANE, Assistant Attorney General, 2nd  
Floor Hoover State Office Building, Des Moines, Iowa  
50317, appearing on behalf of the Respondent.

Reported by: Lou Ann Parker, CSR, RPR

## STIPULATIONS

Mr. Bartels: This is deposition in the case of Robert Anthony Williams v. David Scurr, Southern District of Iowa No. 80-450-D. We have two stipulations at the outset.

The first is that objections need not be made during the deposition in order to preserve them for trial except as to the form of the question.

And the second is that counsel for the Petitioner will retain the exhibits that are used at the deposition today pending trial.

Mr. McGrane: That's fine.

Mr. Bartels: Anything else?

Mr. McCrane: No, that's it.

## PROCEEDINGS

[Printer's Note: Pages 4-50 of Original Transcript]

[Court Reporter marked Petitioner's Deposition Exhibits #1 through #5 for identification.]

## THOMAS R. RUXLOW,

called as a witness by the Petitioner, being first duly sworn by Lou Ann Parker, Certified Shorthand Reporter and registered Professional Reporter in and for the State of Iowa, was examined and testified as follows:

*Direct Examination*

By Ms. Megan:

Q. State your full name.

A. Thomas R. Ruxlow.

Q. What is your present home address?

A. 6664 Crow Creek Road, Bettendorf.

Q. What is your current occupation?

A. Assistant Manager of Corporate Security for Deere & Company.

Q. Mr. Ruxlow, were you with the Iowa Bureau of Criminal Investigation in December of 1968?

A. Yes, I was.

Q. And you were assigned to investigate the disappearance of Pamela Powers on December 25 of 1968?

A. I was assigned on that investigation, yes.

Q. You reported to Agent Mayer; is that correct?

A. Yes.

Q. In Grinnell on December 26, 1968?

A. Yes.

Q. And he instructed you to take charge and to organize his search for the body of Pamela Powers?

A. That's correct.

Q. In Poweshiek and Jasper Counties; is that correct?

A. To organize the search. It was not limited to Jasper and Poweshiek Counties.

Q. Mr. Ruxlow, I'd like to ask you a few background questions about the search.

A. Okay.

Q. In order to prepare for the search you obtained maps of Poweshiek and Jasper Counties; is that correct?

A. Yes.

Q. And you determined what area you actually search in those counties?

A. I don't know as I determined the actual area. An area was determined and probably on the consensus of myself, Agent Mayer, and perhaps a few other law enforcement officers.

Q. And this area was roughly seven miles north and seven miles south of Interstate 80?

A. Yes.

Q. And you routed out—

Mr. McGrane: Are you going to lead him through all these?

Ms. Megan: Just for this background questioning.

Mr. Bartels: I don't think leading would be a proper—

Mr. McGrane: It's not a problem.

Mr. Bartels: I think in the circumstances of the deposition we could, but—

Mr. McGrane: Okay.

Mr. Bartels: Okay.

Q. [By Ms. Megan] Mr. Ruxlow, you grated out the area to be searched onto the maps that you obtained—

A. Yes.

Q. —is that correct? And volunteers had assembled in Grinnell to proceed with the search; is that correct?

A. Yes.

Q. And you assigned volunteers and groups of four to six to search the grids?

A. They were in groups. They could be as many as six and as few as three, and we had six whatever. Whatever seemed to work at the time depending on the people involved.

Q. And the searchers, the groups called in as they completed the search after a grid; is that correct?

A. Called or returned to the staging area.

Q. And you would check off the grids that had been searched?

A. Yes.

Q. And you would reassign searchers to search new grids?

A. Yes.

Q. The search was carried on this way from 9 until 3 o'clock that afternoon?

A. Yes.

Q. And you were instructed to go to the Grinnell interchange at 3 o'clock that afternoon; is that correct?

A. Yes.

Q. And you an Agent Mayer—

A. Mayer.

Q. —Mayer proceeded to the interchange at 3 o'clock?

A. Yes.

Q. And you were met there by Agent Jutte; is that correct?

A. One of the parties, yes.

Q. And at that time he informed you that Mr. Williams had been taken into custody and that the Des Moines detectives were taking him to Des Moines?

A. No, I don't think that's correct. I think we had already been advised that he was, in fact, in custody and then grouped back and then we were to meet them out there.

Ms. Megan: I am now going to hand Mr. Ruxlow what has been marked as Petitioner's Exhibit 1.

Mr. Bartels: Do you want to see that first?

Mr. McGrane: Okay.

Q. Could you identify that document, Mr. Ruxlow?

A. It's a report of the Bureau of Criminal Investigation research of the Pamela Powers homicide dated January 6 of '69.

Q. Whose report is that?

A. This is my report. It appears to be my report.

Q. Would you look at the second page of that report, Mr. Ruxlow, at the portion that I have marked off? I believe it's the first full paragraph and the first sentence of the second paragraph.

A. First full paragraph on the second page?

Mr. Bartels: The small one. There's three lines between the paper clips.

The Witness: All right.

Q. You state in your report, Mr. Ruxlow—

A. Go ahead.

Q. —that Agent Jutte advised you that Des Moines detectives had Mr. Williams in custody and were enroute from Davenport to Des Moines; isn't that correct?

A. Yes, but that's when stated in this, I think we were given this information over a period of time, probably by radio, and just restated that it came from Jutte. But I don't think it came at this particular time. It very well may have. I think we were aware that they were enroute and they did have Williams in there.

Q. But your report indicates that at that time Agent Jutte advised you?

A. Yeah, and I'm saying at this time, and I'm including the radio traffic that we had also with them, so it's a larger time span than what's indicated here.

Ms. Megan: Okay. I'm now going to show Mr. Ruxlow what has been marked as Petitioner's Exhibit 2.

Mr. McGrane: Okay.

Q. Mr. Ruxlow, this is Agent Mayer's report of the investigation. If you would look at the second page, fourth paragraph, I believe that I have marked off there.

A. Uh-huh, I see.

Q. Agent Mayer also states there that Agent Jutte advised him at the Grinnell interchange that Mr. Williams had been arrested; isn't that correct?



A. That is correct. Once again, we were aware of this way in advance of Agent Jutte actually arriving on the scene. We were aware of his arrest in Davenport much earlier.

Q. But the report indicates that it was at the Grinnell interchange.

A. Yes, it sure does.

Q. After you met Agent Jutte at the Grinnell interchange then you followed the car in which Captain Leaming and Detective Nelson and Agents Jutte and Mayer were riding; is that correct?

A. Nelson, if that is his last name, the detective, Captain Leaming at that time, I believe it was, and Anthony Williams were in one car. Agent Jutte was in his car, Agent Mayer was in his car, and I was in my car.

Q. And you all proceeded west at the interchange?

A. Yes.

Q. And you proceeded to where the body was eventually found; is that correct?

A. Yes.

Q. What did you do when you arrived at the sight where the body was found?

A. Went up and observed the body.

Q. Immediately from the time that you got out of your car you went up immediately and observed the body?

A. Uh-huh.

Ms. Megan: I'm now going to hand Mr. Ruxlow what has been marked as Petitioner's Exhibit 3.

Mr. McGrane: Okay.

Q. Mr. Ruxlow, this is a rough diagram not drawn to scale of the sight where the body was found.

A. Uh-huh.

Q. Does that agree with your recollection of it?

A. Well, it's very basic.

Mr. McGrane: It really is. Where are the trees and bushes?

The Witness: There's no other identifying landmarks except a culvert and an access road and a gravel road. This could be any one of a hundred areas in this immediate area.

Mr. Bartels: The intent is to show the relative locations of those three items. Does it appear to be accurate?

The Witness: Yes, I wouldn't say it's accurate. It's, I'd say there's a lot better evidence.

Mr. McGrane: We state it's a very gross representation.

The Witness: Yes, I guess that would be fair.

Q. Mr. Ruxlow, could you indicate on the diagram where you parked your car—

A. No.

Q. —when you arrived at the scene?

A. Huh-uh.

Q. Do you recall whether you passed the culvert before you parked your car?

A. No, I don't. I don't remember where I parked my car.

Q. When you got out of your car do you remember approaching the culvert from the north side or the west side?

A. Well, number one, this appears to be the traveled road, then there is of course a bank affair. And I don't know where the actual road surface ends and the bank affair begins. There is a portion that you can walk up to, and if I remember, walk off of the actual traveled portion of the road, the gravel surface, and onto what would be the sod surface. And I approached it from the south.

Q. So you recall approaching it directly?

A. I remember walking from the road up to the culvert.

Q. Up to the culvert?

A. Yeah, the culvert sticks out quite a ways and it's a fairly steep— It's a dangerous area right in there.

Q. Uh-huh.

A. And I did not walk into, you know, parallel with the road, because it was a crime scene and I didn't want to disturb the crime scene, whatever crime scene there may have been at the time.

Q. You don't recall walking in this direction, walking in an easterly direction?

A. I walked— No, I walked—

Q. From where to the culvert?

A. I walked to the culvert from south to north only to the distance of being able to walk up and look in and observe the body.

Q. Who found the body?

A. I was on the other road north, I believe it's north, looking at that same situation here where you had a culvert and a road which Williams had pointed out earlier as being the spot. I was still up there when Jutte advised me on the radio that the body was down here.

Q. So you were not present when Agent Jutte found the body?

A. No, I was, you know, a matter of a mile away. We just got in our cars and drove around, parked them, and I walked up and looked at it.

Q. Mr. Ruxlow, you were—where were you standing when you first saw the body?

A. Right in this area here.

Q. On the road?

A. Well, what's your definition of road? The gravel or the roadway? I guess we're going into semantics here, but it's important.

Q. No, I understand. Well, let's go— This is still the gravel road here and this is the—

A. Okay. Well, there's a considerable distance from what I have indicated here between the gravel road and the actual culvert. There's a grassy area which you have pictures that demonstrated what this was.

Q. And you were standing in this grassy area; is that correct?

A. Yes, I walked up just far enough to be able to observe the body and then walked directly out. In fact, I asked John Jutte, you know, where the body was and he said, "Well, it's up here." And I walked there and I tried to get to create no more disturbance than what he had done, and I tried to follow his same footprints and his same general path so we could both say we had been in that area.

Q. Mr. Ruxlow, taking into account the shortcomings of this diagram, could you make a mark where you would have been standing when you first saw the body?

A. It would be in this—

Mr. McGrane: Excuse me. If he's going to do that, let him show how far he believes that the culvert is from the road.

Ms. Megan: Fine.

Mr. McGrane: Because you have very little space from the edge of the—from where the culvert shows to the edge of the road, and he's indicated that there is quite a bit of stuff there that's not ditch and it's not culvert and it's not road. So can he mark that into as he thinks it would be? Otherwise, I think any marking where he stood is going to be deceptive on this.

Q. That would be fine. If you would indicate how far you believe it is from the culvert to the—

A. Okay. The ditch is—

Q. —road.

A. The ditch is about down there and the culvert then should be extended out, out a little bit further, because actually this culvert is actually covered up by the top of the roadway, and he is standing right about in this area here.

Ms. Megan: Okay. Mr. Ruxlow has marked with an X the spot where he believes he was standing where he first saw the body after he had modified the diagram.

I'm now going to hand Mr. Ruxlow what has been marked as Petitioner's Exhibit 4.

Mr. McGrane: I've seen it.

Q. Okay. Mr. Ruxlow, does this picture depict the scene as you recall?

A. Yes, uh-huh.

Q. Could you lay the photograph down? Thank you. Could you indicate on this photograph where you were standing when you first saw the body?

A. Right in this area right up in here.

Q. Could you mark an X with this pen where your feet would have been when you first saw the body?

A. Okay. Right about this area right here.

Mr. McGrane: You have big feet.

The Witness: Well, you know, this is not a good photograph for demonstration purposes. There are other photographs better that show the elevation. You are taking this from an angle that it's difficult to tell, because I can't see the elevation. If I had the photograph where it's looking directly at the end of the culvert. I could

probably show you much better where I stood, but generally it's in that area as far as this picture is concerned.

Mr. Bartels: That's fine for that.

Ms. Megan: I am now going to hand Mr. Ruxlow what has been marked as Petitioner's Exhibit 5.

Q. Mr. Ruxlow, does this photograph depict the body as you first saw it?

A. Yes, it does.

Q. Can you indicate where you were standing when you first saw the body?

A. About this area right here.

Q. Okay.

Mr. McGrane: What exhibit is that, 5?

A. It could have even— I have to enlarge this just a little bit. Be that particular area right there. I'm not—It's been 13 years ago. And I remember we walked up and we looked down. I don't remember if it was straight down or to one side or the other. It would be more over to this side than this side. I guess maybe take that out. That would be more accurate.

Ms. Megan: Mr. Ruxlow has indicated on the photograph by marking with a circle where he was standing.

Thank you, Mr. Ruxlow. I don't have any further questions.

*Direct Examination*

By Mr. Bartels:

Q. Okay. Let's start with Exhibit 5 again. Let me just continue with that, if I can. Your testimony is that this is the way the body was when you first saw it.

A. No. That's where the body was when I first saw it.

Q. Could you explain why it's not the way you saw it?

A. This area has been disturbed.

Q. And how has it affected the appearance of the body?

A. It appears it's been—snow has been removed from the body. This area is more trampled down than what it was when the detectives from Des Moines Police Department in that section arrived. It was much more trampled down and much more disturbed as was this area here as was the body.

Q. Your testimony for purposes of the record, then, is that most of the area within three feet of the body has been disturbed to some extent?

A. I'd say so, yes.

Q. And I take it you are also testifying that snow was brushed away from the body before this picture was taken?

A. Yes.

Q. That there was more snow on the body?

A. Yes.

Q. When you first observed it?

A. Yes.



Q. Mr. Ruxlow, let me hand you back Exhibit #1 again, which you earlier identified as something that appeared to be your report on this matter. I take it it was the custom in the BCI at the time to make this sort of report?

A. Yes. It's been vastly improved since this time, period.

Q. And then those reports were kept in the files of BCI in the regular course of the BCI business?

A. That's correct.

Q. And I take it that this report then would indicate that you actually dictated this report or perhaps wrote it out on January 6 of 1969?

A. That would appear to be the case, yes.

Q. And I take it you would have done that from some notes that you had?

A. Yes.

Q. Do you have any idea where those notes would be now?

A. No. Those—Any files that I had, and I had some of my original files when I moved, when I was promoted and moved to Des Moines in about '73, I think most of those were destroyed at that time.

Q. And I take it it was your custom and you made out these reports to make them as accurate as you could—

A. Yes.

Q. —from your notes? And handing you Exhibit

#2, I take it again this is the exact same kind of report that we've just been dealing with in Exhibit #1?

A. It is a copy of an official report.

Q. Right. And again this would have been in the regular course of business for Mr. Mayer to make this kind of report?

A. Yes.

Q. And it would be the regular course of BCI business to keep the report in the files?

A. Yes.

Q. Mr. Ruxlow, in December of 1968 or more specifically the 25th and 26th, what were your normal working hours?

A. The scheduled working hours were 8 to 4:30 Monday through Friday with the exception of holidays. The normal working hours were any time that you were called out.

Q. Okay. So you are testifying that you had a sort of a regular—I don't know if I want to call it a shift, but a time when you were supposed to be working, 8 to 4:30, but you also were accustomed to being called out?

A. That's right.

Q. For additional hours? On December 26 were you acting under Nick's direction or supervision?

A. Yes, Special Agent Mayer.

Q. And would Agent Jutte have also directed you? Would he have been a superior?

A. No, no. In fact, you go by more or less seniority to one extent and what we call a case agent. Case agent really is the one that directs the activities, and you could have a junior agent, more or less, directing the activities of a senior agent. In this particular case Agent Mayer was the senior agent, and I think he was what we call the ticket holder, the man that had the assignment slips on this particular case, so he was the one that was probably directing Agent Jutte.

Q. Okay. Now, I want to go back to that time around 3:00 in the afternoon on December 26.

A. All right.

Q. At that time you got a call to meet Officer Jutte or Agent Jutte at the Grinnell interchange; is that correct?

A. That's correct.

Q. And at that time you discontinued the search?

A. No. At that time we left the Grinnell Police Department and met them down there.

Q. Do you recall when the call came?

A. We didn't have too much notice. It was Jutte and then, I believe, and I don't mean to be mistaken. It was something to the effect that Jutte and the Des Moines detectives want to see you down at the Interstate 80 truck-stop.

Q. Okay. Then that was the nature of the message, just that they wanted to see you?

A. Yeah, and Mayer and I drove our cars down there to meet with them.

Q. And when you got to the Grinnell interchange you had some conversation with Agent Jutte?

A. That's correct.

Q. And it was determined that you would follow the other cars west towards Des Moines at that time; is that correct?

A. That's correct.

Q. And at that point when you then started toward Des Moines the search effectively was discontinued; is that correct?

A. No, no, it's not. It was just more or less left in the status that it was when I left the building.

Q. Which was that it would end at the Polk County line; correct?

A. Well, everything that we had put in motion at that time would continue, if you will. Nobody said stop searching. Just everything was left in motion.

Q. But the grids that had been made related to Jasper County?

A. That's correct, at that particular time.

Q. And essentially the search was going to come to a halt when the volunteers came back and there was no further direction for them to do anything; is that correct? That that was essentially the way the search was going to end at that time?

A. That's the way it wound up ending. That was not the design of it. I had specific orders to search Interstate 80, and that's what I had planned to do is to continue that search. But was interrupted by the arrival of Jutte and the request to accompany him.

Q. When did you get those instructions to search Interstate 80?

A. That was given to me that morning.

Q. At around 8:00?

A. Yeah. The only reason that the thing stopped when it did was that we were interrupted. And it was not stopped. Officially it was left hanging, so to speak.

Q. And now as of 8:00 then on December 26 the instruction was to continue on into Polk County?

A. No, my instructions were to search Interstate 80. And they were particularly interested in from Des Moines to the Grinnell area.

Q. Which would have included Polk County.

A. Yes.

Q. What I'm asking is whether you were instructed to search on into Polk County.

A. My instructions were general, to search. And my plans had been to search Poweshiek, Jasper and working on into Des Moines.

Q. And that was from 8:00 when you first took over?

A. That's correct.

Q. You received the instructions that you received from Agent Mayer, I take it.

A. There were several people had input to that. I know the director of the Bureau at that time was in communication with us. So it was just not in that particular situation that Mayer and I— We had input from other supervisory personnel of the Bureau.

Q. Mr. Ruxlow, did you review your report, this report that we've been referring to as Exhibit #1, before you came here today?

A. I have glanced at it. I haven't reviewed it in detail.

Q. When was the last time you glanced at it?

A. This morning.

Q. And I take it you believe this to be your report that you made?

A. Yes, I do.

Q. Okay. Now, it's your testimony that—

Mr. McGrane: Go ahead. I just—Do you mind if I look at this while you are asking?

Mr. Bartels: No, I just wanted to know if you wanted me to stop while you were looking at it.

It's your testimony they intended to go into Polk County if you weren't successful in Jasper and Poweshiek Counties; is that correct?

A. That was my intention, yes.

Q. And that the reason you didn't do that was that you got called to the Grinnell interchange and then were directed to follow the other officers or go with them toward Des Moines—

A. That's correct.

Q. —is that right? Now, at 3:00 on the 26th of December of 1968, I take it you didn't really know whether Pamela Powers was dead or alive.

A. No, I had no way of knowing.

Q. And I take it there was also some, at least some prospect of snow that day?

A. I don't remember the prospect of snow as much as I remember the weather conditions of that particular date. It was slick. The highways, the interstate particularly were very slick. And I don't remember what that attributed to, a snowfall or a sleet or a rain.

Q. And yet you suspended this search at 3:00?

A. No, I did not suspend the search at 3:00. I left the search. I left the command post at 3:00.

Q. I take it from your testimony at the earlier motion to suppress that you knew there was nobody else there at the time to continue to coordinate and organize the search.

A. Well, see, when we left we anticipated coming back, so everything was left in motion. When they asked us to go with them we didn't anticipate, at least I didn't think we were going to be gone quite that long. The road conditions slowed our travel from there to the spot where her body was found, and it just got later and later and it was obvious that Mr. Williams was going to point out the location of the body to us, and so we just went on with the business at that time. And in fact, I left my maps and such back at the police department.

Q. When you started on this trip from the Grinnell interchange how long did you think you were going to be gone?

A. No, I didn't anticipate we were going to be gone all that long.

Q. Where did you think you were going?

A. I really didn't know.

Q. Now, what was your purpose in going with these other officers? What purpose did you feel you were serving?

A. We were leaving one of us to accompany him. We really weren't told the purpose. And I was in doubt as to why we were getting involved where we were going. I have my suspicions that Williams may be leading us to the body, but I wasn't sure. I had no way of knowing. I wasn't told specifically, just the impression that I had. I didn't know where that was.

Q. Did you question why you were going to go with them?

A. No.

Q. Was it your decision whether to go with Leaming—

A. No.

Q. —and Jutte? Whose decision was it?

A. It was Leaming's request and we complied.

Q. Who could have said no?

A. Any one of us, I suppose.



Q. So you were not directed by Agent Mayer to do this, I take it.

A. Well, I'm not sure of that. We met them there and they asked us to go, and everybody just went. And then I'm not sure anybody gave any specific direction to go or not to go. We really weren't given that much information.

Q. I take it Agent Mayer upon getting Captain Leaming's request decided to go.

A. Yes.

Q. And you went with him?

A. Yes.

Q. And in the end if it had come to it, it would have been Agent Mayer's decision whether to go with them or go back to Grinnell; is that correct?

A. Yes.

Q. Now, you said you had some feeling and in terms of why you were following Detective Leaming and Agent Jutte. You said that you had some feeling that Mr. Williams might lead them to the body.

A. Yes.

Q. I take it there was really no need for you to go with them in terms of securing the area.

A. I didn't know. I just got the general impression because of lack of information and desire to get going down the highway that he had either indicated that he was going to show them where the body was or that he maybe told them where it was or that he had a feeling

that he was going to tell them. I don't know, but just that general situation. That's what my beliefs were.

Q. And the lack of any other explanation that you could think of?

A. Yes.

Q. It wasn't anything that Captain Leaming said to you?

A. No.

Q. Do you think it made sense to suspend the search for that girl that you didn't know the condition of whether to follow those officers to Des Moines toward Des Moines?

A. The search was not suspended. It was still going on. The crews that were out were still going on, so that the search was not suspended. I—

Q. Wouldn't you have had to have anticipated, given your testimony at the motion to suppress, that there wasn't going to be anybody else there after you and Mayer left who could conduct this search? Didn't you have to anticipate that if you were gone for any length of time that the search was going to come apart in terms of organization?

A. It would conclude up to the point it had been organized.

Q. Which was to the Polk County line?

A. To the Polk County line at that time, yes.

Q. So that when you left you knew that, and you have testified already you didn't know how long you would be gone; is that correct?

A. That's correct. I didn't anticipate being gone as long as we were.

Q. But you didn't know how long you were going to be gone?

A. No.

Q. And you also knew that if you were to go on for a substantial length of time that that search had only been organized to the Polk County line; is that correct?

A. That's correct. At that time.

Q. Now, what I'm asking, did it seem to you to make sense to do that when the girl might still be alive?

A. Well, if you want to talk about the probability of the girl being alive, we all felt at that time it would be nil.

Q. But you didn't know that she was dead? There was some possibility that she was alive; isn't it?

A. It was possible, but not very probable given the circumstances and the weather and no clothing. Let me say this, based on my experience the probability factor would be about zero.

Q. Assuming, I take it, that she had been outside that entire time—

A. That's correct.

Q. —and you didn't know whether that was true; correct?

A. No. Well, we had the indication that she probably was based on the fact that her clothes had been disposed of at the Grinnell rest area, which indicates that he was disposing of them as he was going along.

Q. And that relates to whether she would have been inside or outside?

A. Yeah, from that we had anticipated that she was probably outside.

Q. Let me just make sure I've got one other thing clear. That if a question had been raised at the Grinnell interchange about whether you should do this, go off on this trip with Captain Leaming—

A. Uh-huh.

Q. —that it would have been Agent Mayer's decision whether you did it?

A. I believe that's correct, yes.

Q. Mr. Ruxlow, do you recall testifying at the motion to suppress in 1977?

A. Yes.

Q. Prior to testifying did you discuss the case with somebody from the prosecution?

A. I probably would have, yes.

Q. Do you recall who that was?

A. I think Blink was the one, Rob Blink, was the one that handled the trial, so it would have been him.

Q. And I take it you got together with him before the suppression hearing and discussed your testimony with him.

A. Didn't discuss the testimony. Discussed the facts of the case.

Q. Okay. You discussed what occurred out there?

A. That's correct.

Q. And what explanation did he give you about what the suppression hearing was about?

A. That through my search, which he hadn't realized until after the court overturned the conviction that he realized that the body would have eventually been found. And they needed my maps and my testimony to demonstrate that.

Q. So they understood that what Mr. Blink had to show was that the body would have been found through your search if it had continued?

A. That's correct. Which the information was available back in 19—. Whenever the first trial was.

Q. Did you discuss this deposition with Mr. McGrane?

A. Oh, yes.

Q. Beforehand?

A. Yes.

Q. And can you tell me what the nature of that discussion was?

A. About the facts of the case, what I had done that day.

Q. Just you went over the facts with Mr. McGrane?

A. I think so.

Q. Did he give you an indication as to what this deposition was about?

A. No. In fact, he didn't know except that you had some pictures that you wanted to show me.

Q. Did you see any of those pictures before the deposition?

A. Those pictures, no.

Mr. McGrane: Hold it. Are you sure?

The Witness: Not those pictures. I have seen pictures that are available through the police files.

Mr. McGrane: Some of them are duplicates of those; aren't they?

The Witness: Yes, uh-huh.

Q. Okay. Let me— Before you came to this deposition today and after you knew that you were going to have to come here did you look at a picture that was the same as Exhibit #5?

A. I'm not sure if it's the same, but I looked at a series of pictures which this appears to be—to have been one of them. I can't say that that is the exact picture.

Q. Okay. And where did you get that picture?

A. I was over at the Bureau office reviewing the file to kind of update myself and also to ask Speed Leaming to bring up his copies of the photograph since

ours was not available. Our file had been cannibalized for the trial. We had no pictures.

Q. Okay. So Detective Leaming, Captain Leaming brought some pictures over?

A. Yes.

Q. And he got those from the Des Moines Police files?

A. From his file and/or the county attorney's file. Which were some of the same pictures that we at one time had in our files that were no longer available.

[Discussion off the record].

Q. Okay. Just one more thing. You indicated that you went over to the—what's now the Division of Criminal Investigation; is that—

A. That's correct.

Q. And looked through that file—

A. That's correct.

Q. —there? Did that file include your report?

A. Yes.

Q. Did it include Agent Mayer's report?

A. Yes.

Q. Did it include anything else?

A. The file is old. It's really—What you see is examples of what is in there. I didn't feel there was anything all that significant in there. I felt as an ex-law enforcement officer before giving testimony in this matter.

Q. I'm not asking for—I'm just trying to identify what materials you have seen.

A. There wasn't anything of that significance in there. When I saw that report, I have seen it so many times I just glanced through it and there wasn't anything significant in there. I didn't spend much time on it. I didn't have those pictures available to refresh my recollection.

Mr. McGrane: There was other material in the file.

The witness: Yes.

Q. And can you describe to me what the material in the file was?

A. Miscellaneous reports, some dealing with the retrial in '77, I believe.

Q. Uh-huh.

A. Locating witnesses, reinterviewing them, some miscellaneous stuff. And that being, I think, the majority of it.

Mr. McGrane: Let's go off the record.

[Discussion off the record.]

Q. Okay. Let's go back on. Besides the pictures that Mr. Leaming brought you from the Des Moines or from wherever, and besides the material in the DCI files, did you review any other documents?

A. I reviewed my testimony at the suppression hearing.

Q. And that's the 1977 suppression hearing that you are talking about?

A. Yes.

Q. Anything else besides those three categories?



A. No.

Mr. Bartels: Okay. Do you have anything?

Mr. McGrane: I have a couple.

*Cross-Examination*

By Mr. McGrane:

Q. Your reference in there is that you met Agent Jutte at 3 p.m. Now, did you meet him at 3 p.m. or did you get the call at 3 p.m. or do you know?

A. It's— At this time, you know, I'd have to say that if I stated in there I met him at 3 p.m., I probably met him as 3 p.m.

Q. Okay. And now did you go from meeting him at 3 p.m. did you go directly from there to the place where the body was found?

A. No.

Q. What did you do in the meantime?

A. There was a question about some clothing having been dumped out at the trash receptacle as I believe it was a Texaco station. And they were looking for some articles of clothing in the immediate trash area, but I believe that the trash has been since disposed of and so that— We saw Speed there and at that time everyone said, "come on, let's go. We're going on west."

Q. This is at a Texaco station at an interchange?

A. I believe it is.

Q. Now, there's reference to rest stops and interchange. Did you also stop at a rest stop?

A. No. Well, I don't remember. The rest stop, I believe, was covered earlier because the clothing had been found by the rest area attendant earlier, which led us to searching Interstate 80.

Q. Okay. Now, where did you go from stopping at the Texaco station?

A. We drove west on Interstate 80.

Q. And there were how many cars?

A. Well, there would be a car with Leaming and Williams Jutte had a car, I had a car and Mayer had a car.

Q. How about highway patrol?

A. There wasn't any at that time.

Q. Did you meet highway patrolmen later?

A. Yes.

Q. Before you got to the scene where the body was found?

A. Yes, uh-huh. They called him in to assist us because he was familiar with that general area.

Q. Was there another stop between the Texaco station and where the body was found?

A. Yes.

Q. Where was that?

A. An area I believe about one mile north of that, an area very similar to that particular area which he had—Williams had directed us to earlier claiming that the body was in fact, there.

Q. And what was done at that area?

A. We all got out and looked with, of course, negative results.

Q. How long do you believe you spent there?

A. Oh, quite a while. Quite a while. We looked up and down the ditches and in the culvert and around the culvert and in the immediate area. We looked at the most obvious place and expanded it because he said that's where it was.

Q. And then the people left that area?

A. Yes. Leaming, Jutte and Whistler, those three vehicles.

Q. Whistler is—

A. Iowa Highway Patrolman. Went to the next road over because it had a similar layout as the one Williams had described the body being dumped at.

Q. And did everybody leave at once?

A. No, Mayer and I stayed there and continued to look in that particular—

Q. When did you leave there?

A. After Jutte called us and said the body was down there.

Q. And then you proceeded to the area where the body was found?

A. Yes.

Q. And you said you had—you had been extremely careful not to disturb the crime scene; is that correct?

A. That's correct.

Q. Had the area or snow around the body been disturbed when you got there?

A. No.

Q. Now, would you describe this area for us, this large—large area within a quarter mile either side, what kind of area are we talking about?

A. Has a gravel road going east and west, cornfield obviously on both sides. No buildings in the immediate area at the time the body was found, but are those pictures of the general area?

A. Yes.

Q. Okay. Now, can you identify where that culvert is on Exhibit A?

A. Yes. It's down below this, what I'll call this tree line area.

Q. There is a tree line there?

A. Yes. A tree, bush, scrub brush.

Q. Okay. Now, does that indicate to you as a person who has grown up in Iowa that there's liable to be a culvert in that area?

A. Yes, because of the tillage around the area which leaves the grass for the water flow-way.

Q. But the tillage wouldn't show in the wintertime?

A. No, but this brush and such would.

Q. And that would indicate to you a culvert?

A. That would be one of the indications.

Q. Okay. And that's also shown on Exhibit B?

A. Yes.

Q. In some more detail?

A. Yes.

Q. Okay. Now, on your report there is some question as to what you were told at the exchange by Agent Jutte and what you may have been told before. Does the report also reflect incidental contacts?

A. No, it's kind of a general— At that time it was a general.

Q. And you worry about detail when in a report?

A. In specific interviews or specific situations. This was just to indicate that we had a meeting and we exchanged some information.

Q. Okay.

A. The details would be brought out at a later portion of the report if necessary.

Q. I think you have already clarified this one, but you described that one picture, Exhibit 5, I think it's 5, as depicting the body as it was when you first saw it.

A. No.

Q. You had, in fact, that— Would you clarify that again?

A. Okay. The body is in the position when I— It reproduces a position of the body when I first saw it. Only the position of the body.

Q. So all the disturbances from later—

A. Yes.

Q. —when you stopped the search or you left the search headquarters at Grinnell, what was the posture of the searcher? Where were the searchers?

A. They were out.

Q. They had not all reported back in?

A. No. They were people that had just left, people that had just returned, people getting coffee, people still out. You know, just in the middle of the search.

Q. What time had the last searchers been sent out, do you recall?

A. They were constantly being sent out. They were to report back in either by phone or in person. The area that they had searched would be checked off. They would be given a new assignment. They would be getting coffee, taking a rest stop, what have you. It's a continuous activity that you would have in a situation of that type.

Q. Did you do anything in reference to the search again after that?

A. No.

Q. Did you leave your materials at the scene?

A. Yes, I did.

Q. And you had to go back and pick those up?

A. Yes, along with all my notes and such.

Q. And your maps?

A. In the teams, yes.

Q. In other words, you had just taken your body out of the scene and left your—all your equipment and everything there?

A. That's correct.

Q. Okay. How long had you been in the BCI at that time?

A. I joined BCI December 1 of 1967.

Q. So you had only been there about a year?

A. Yes.

Q. When you were told to search you continued to search until somebody told you to quit; is that correct?

A. That's right, yes.

Q. Or as ours is not to reason why?

A. I had a job and that was to organize the search along Interstate 80, and that's exactly what I did.

Q. Had you had experience on searches?

A. No.

Q. Why?

A. I had experience at Cedar Rapids Police Department and I had military service.

Q. And you had done grid searches like this before?

A. Yes.

Mr. McGrane: I think that's all I have. One more question.

Q. The grids were not necessarily the limit of the search; were they?

A. No, they were general and they varied from section to section because of the roads and because of the rain and the accessibility to that particular location.

Q. Were all the grids on those maps searched?

A. No. The ones that were checked were. Some of them I had gridded out and then disregarded based on input from the local officers.

Q. And you, in fact, did not search around like where the grids included the city of Newton?

A. No, we left that for a— We wanted to get moving on down the road. We felt that that was not a higher priority of searching along Interstate 80 from the officers, so we worked around like Grinnell, Newton so that we could come back and pick those up, if necessary.

Q. Did you assign these grids in a line order going on Interstate, like start 1, 2, 3?

A. I think I started— I'd have to look at my map to refresh my recollection, but I think I started at Grinnell and went east and west and then got as far as the Iowa-Poweshiek line and then went back west of the Iowa-Poweshiek county line.

Q. You stopped at the Iowa-Poweshiek county line?

A. That's all the further east I was going to go.

Q. Why?

A. The clothing had been found at the Grinnell rest area which was west of Grinnell, and we surmised that the articles of clothing would be the last articles he would get rid of, so we felt that we should be searching from Grinnell.



nell, cover Poweshiek County but not go east onto Iowa County but concentrate our efforts first west.

Q. How far west?

A. Well, back to Des Moines where he started from.

Mr. McGrane: Okay, that's all I have.

[Court Reporter marked Petitioner's Deposition #6 for identification.]

*Redirect Examination*

By Mr. Bartels:

Q. Mr. Ruxlow, I'm handing you what's been marked Petitioner's Deposition Exhibit #6 and which is Exhibit I from the motion to suppress hearing. This is a map of Jasper County. This is the actual map that you gridded out; is it not?

A. That's correct.

Q. And I take it, then, each grid where there is a check mark, the searchers reported back to you that they had searched; is that correct?

A. Yes.

Q. Now, calling your attention to— Well, I'll point to it.

A. Okay.

Q. There's a line of shallow boxes along the—toward the southern end of the county marked 40, 39, 38, 37 going west to east. Are those checked off?

A. No.

Q. Or are those stricken?

A. Those were stricken.

Q. Those were the ones that were gridded out and told you to be searched; is that correct?

A. Yes, this one here at 37, there's really no roads in it and it wasn't— As I was gridding them out I was more concentrating on grids that could be worked and didn't recognize that there wasn't any roads in there. And there's a town right there like this one here, there's Prairie City. And we felt that I was getting a little bit out of my, what I had set up in my own parameters, I was getting a little to much distance in there to cover, so those were eliminated. When you see Exhibit 30 here, there were three teams out there that checked that particular area.

Q. Why would that have been?

A. I'm not sure. There is a— There's three separate teams that all reported back in. Maybe there was a few numbers that particular team or the equipment they had to work with. I'm not sure. There were a lot of variables that had to be taken into consideration.

Q. Okay. Let me just make sure about one thing. When you left the Grinnell interchange to travel, you traveled first west on Interstate 80; is that correct?

A. That's correct.

Q. And then, as I recall, the earlier testimony perhaps of Officer Jutte, you actually got off the Interstate, turned around and went back east for a while; isn't that right?

A. I don't remember that. If you are addressing the Mitchellville area, we might have missed a turn, but as I

recall, we got back in—when we got onto 80 my recollection is that we went westbound and I don't remember us getting—

Q. And the Texaco station would have been someplace west of there, then?

A. No, the Texaco station is at the Grinnell interchange.

Q. Okay. And you don't recall going to the rest stop?

A. We may have. We may have. I spent a lot of time there and we very well may have.

Q. Okay. Now, when you left the Grinnell exchange in any event, you didn't really know what the purpose of it was; is that fair?

A. No, I didn't. I wasn't told what the purpose was. I had a feeling what the purpose was.

Q. And your feeling was maybe because nobody told you you had anything else, that maybe he was going to take you to the body?

A. Yes, that the way the whole situation was handled, hurry up, let's go, we've got something coming up down the line, we want to get it done.

Q. And I take it at that point in terms of the number of officers who were already around, there really wasn't any purpose for you to be along if he was going to take you to the body?

A. I don't know if it was a general area and he wasn't sure about the specific location within that general area.

Q. But you don't know any purpose?

A. No, huh-uh.

Mr. Bartels: Okay.

*Recross-Examination*

By Mr. McGrane:

Q. My turn. On this Jasper County map, Mr. Ruxlow, the grids are checked all the way up to the Polk County line; is that correct?

A. That's correct.

Q. As having been searched?

A. That's correct.

Q. Did you make all the checks before you left at 3 p.m.

A. No.

Q. Would you tell us when you made some of those?

A. In the course of organizing the search the people would report to the Grinnell Police Department. They would be assigned into teams and then their names would be logged on a sheet of paper. And then they would be given a small replica of this map with the area marked out and the number and asked to go out and search that area. Then they would report back and then they would say, "I'm Ruxlow and we had area 21." That would be checked off and asked if they would care to go out again.

If they would, then the new area would be assigned and we just kept a running tab along the margin with that particular group so we know what group was assigned to what particular area.

I had personnel where the Grinnell P.D. were assisting me and when they come in, they would sometimes mark off the—draw a line through the number and I would talk to them and ask them if they would go out again, get them a new area, get them a new map.

Q. When you left you left no particular police personnel in charge; did you?

A. No, no. We just went out to meet them and did drop from that point.

Q. But searchers could report back?

A. Yes, uh-huh.

Q. And when they reported back who would they report to?

A. Well, that main room and whoever was helping me at the time would cross out the corresponding numbers next to the teams.

Q. But you would have left nobody in that main room to take over when you left?

A. No, it was just more or less up in the air and it was such a short time and we never came—

Q. So the searchers happen to report to whoever would be available?

A. Yes.

Q. And when you came back to pick up your work papers and your maps were there indications that people had come in your absence after finishing searching their area?

A. Yes.

Q. And what did you do?

A. Well, I updated my map and for my report.

Q. From the work papers that you had left there and the other people had filled in?

A. That's correct.,

Mr. McGrane: Okay. That's all.

*Further Redirect Examination*

By Mr. Bartels:

Q. Do you recall which county or which grid you checked off after you got back?

A. No, I don't.

Q. Just a second. Mr. Ruxlow, did you and Mr. McGrane discuss anything besides this matter of when the check marks were made—

A. No.

Q. —during this last interval?

A. No.

Mr. Bartels: Okay. Anything more, counselor?

Mr. McGrane: Not any more.

[The record was closed at 12:14 p.m., Thursday, July 16, 1981.]

[The reading and signing of this deposition has been waived.]

### CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter and Registered Professional Reporter of the State of Iowa, do hereby certify that there came before me at the time, date and place hereinbefore indicated, the witness named on the caption sheet hereof, who was by me duly sworn to testify to the truth of said witness' knowledge touching and concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination taken down by me in shorthand, and later reduced to typewriting under my supervision and direction, and that the deposition is a true record of the testimony given and of all objections interposed.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof I have hereunto set my hand this 25th day of July, 1981.

**LOU ANN PARKER**  
Certified Shorthand Reporter  
Registered Professional Reporter

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HABEAS CORPUS EX. 17  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

ROBERT ANTHONY WILLIAMS,

*Petitioner,*

v.

DAVID SCURR, Warden of the  
Iowa State Penitentiary at  
Fort Madison, Iowa,

*Respondent.*

STATE OF IOWA, COUNTY OF POLK, ss

Civil No. 80-350-D

AFFIDAVIT

I, Gerald W. Crawford, being duly sworn, hereby depose and state as follows:

1. I am an attorney licensed to practice in the State of Iowa. I was so licensed at all times referred to below.

2. In April of 1977, I was appointed to represent Mr. Robert Anthony Williams in the retrial of *State v. Williams*, Polk County, Crim. No. 55805-69. Also appointed as co-counsel were Mr. Roger Owens and Mr. John Wellman of the Polk County Offender Advocate's office. The trial judge in that case was the Honorable J. P. Denato.



3. Following the trial of the *Williams* case, I had occasion to speak with Judge Denato about a probation revocation matter relating to another case. During that conversation, Judge Denato raised the *Williams* case.

4. During our conversation, Judge Denato and I discussed the appeal in the *Williams* case, and particularly the issue of Judge Denato's ruling on the defense's motion to suppress the evidence found on the victim's body. I commented to Judge Denato that the prosecution had not given him the best record on which to base his ruling, and he responded that I was the master of understatement. Judge Denato also said that if he had been prosecuting the case, he would have called many more witnesses to establish the record.

5. During the same conversation, Judge Denato stated that he thought we would prevail on the suppression issue on appeal. He later referred to our chances of prevailing on that question as at least 50-50.

6. In the context of the conversation referred to in the preceding three paragraphs, I believe that Judge Denato's comments went to both the quality of the lawyering by the prosecution and to the quality of the record on the issue of whether the victim's body would have been found "in any event."

7. Prior to the trial in *State v. Williams*, I travelled to Cedar Rapids to attempt to gauge community sentiment about the case. At that time, I spoke with a number of individuals. I also spoke with Cedar Rapids residents by telephone from Des Moines. These inquiries did not provide me with any real indication one way or the other as to whether Mr. Williams could receive a fair trial in Linn

County. I was not able to think of any other means of determining whether Mr. Williams could receive a fair trial in Linn County besides opinion polling.

\_\_\_\_\_  
Gerald W. Crawford

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Notary Public

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

Civ. No. 80-450-D

ROBERT ANTHONY WILLIAMS,  
Petitioner,  
vs.

DAVID SCURR, Warden of the Iowa State  
Penitentiary,  
Respondent.

MEMORANDUM IN SUPPORT OF PETITION

• • •

(p. 16)

III.

THE STATE COURT'S ADMISSION OF EVIDENCE  
RELATING TO THE VICTIM'S BODY VIOLATED PE-  
TITIONER'S RIGHTS UNDER THE FIFTH, SIXTH,  
AND FOURTEENTH AMENDMENTS.

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(p. 21)

B. *The "Inevitable Discovery" Test Applied by the State Courts was Constitutionally Impermissible.*

In affirming Petitioner's conviction after retrial, the Iowa Supreme Court agreed with the district court that the victim's body and evidence derived from it were admissible under the "inevitable discovery" doctrine, or "hypothetical independent source rule." 285 N.W.2d at 256-262. As articulated by the Iowa Supreme Court, this doctrine involves a two-part test under which the State must show (a) that the police did not act in "bad faith," and (b) that "the evidence would have been found without the initial lawful activity and how that discovery would have occurred." As the Iowa Supreme Court recognized, *id.* at 262, the hypothetical inevitable discovery doctrine has never been endorsed by the United States Supreme Court; nor has it been endorsed by the Eighth Circuit Court of Appeals. This is hardly surprising, since adoption of the inevitable discovery exception would be wholly inconsistent with decisions of the United States Supreme Court concerning the Fifth and Sixth Amendment and the "fruit of the poisonous tree" doctrine.

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(p. 24)

Application of the constitutionally appropriate fruit-of-the-poisonous-tree standards to the instant case shows that the victim's body and the evidence derived therefrom should have been excluded from the trial. In this regard, *Brown v. Illinois*, 422 U.S. 590 (1975), is especially instructive. In *Brown*, the defendant was arrested, without probable cause, at about 7:45 p.m. Following repeated *Miranda* warnings, he gave two incriminating statements,

first at about 9:00 p.m., and the between 2:00 and 3:00 a.m. the following day. The Court reversed Brown's conviction, holding that both statements were fruits of the illegal arrest, and that the *Miranda* warnings did not sufficiently attenuate the taint. 422 U. S. at 604-605. The Court stated that in determining whether the "casual connection between the illegality and the confession" had been broken "for Fourth Amendment purposes," the *Miranda* warnings were important but not dispositive, and that at least three other factors were important: the "temporal proximity of the arrest and the confession," the "presence of intervening circumstances," and, particularly, "the purpose and flagrancy of the official misconduct." 422 U. S. at 603-604.

(p. 25)

In the instant case, the "temporal proximity" of the initial illegality (the interrogation of Petitioner in violation of his right to counsel) to Petitioner's first incriminating statement and the discovery of the body was closer than that of the arrest, first statement, and second statement in *Brown*. Moreover, in *Brewer*, the United States Supreme Court repeatedly commented on the flagrancy of the violation of Petitioner's rights, and on the fact that it was Detective Leaming's very purpose to uncover evidence relating to the victim before Petitioner could consult with his attorney. *Brewer v. Williams, supra*, 430 U. S. at 399, 406, 407-08, 412. At the same time, while in *Brown* the police at least gave *Miranda* warnings between the arrest and Brown's confessions, in this case there were *no* intervening circumstances between the primary illegality and the discovery of the victim's body to dissipate the taint of the violation of Petitioner's right to counsel.

While the preceding analysis is sufficient to demonstrate that the Iowa Supreme Court's use of the "inevitable discovery" doctrine was constitutionally invalid, that use was especially egregious in the instant case because the initial illegalities from which the challenged evidence was derived were violations of the Fifth and Sixth Amendments, not of the Fourth Amendment.

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STATE'S DISTRICT COURT BRIEF  
(pp. 16, 21, 24, 25)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil Action File No. 80-450-D

ROBERT ANTHONY WILLIAMS,  
Plaintiff,

vs.

DAVID SCURR, Warden; and the  
ATTORNEY GENERAL OF THE STATE OF IOWA,  
Defendant.

B R I E F

• • •

(p. 6)

II. THE APPLICATION OF THE "INEVITABLE DISCOVERY RULE" BY THE IOWA COURTS WAS IN ACCORD WITH THE CONSTITUTION AND DOES NOT ENTITLE PETITIONER TO HABEAS CORPUS RELIEF.

## A.

At Petitioner's trial evidence about the condition of the victim's body and evidence from the body was offered against Petitioner. This evidence had been ruled erroneously admitted in an earlier trial because it had been discovered as a result of statements obtained from Petitioner in violation of his 6th Amendment right to counsel. *Williams v. Brewer*, 375 F. Supp. 170 (S. D. Iowa 1974), *aff'd*, 509 F. 2d 227 (8th Cir. 1974) affirmed on certiorari *Brewer v. Williams*, 430 U. S. 387 (1977).

The admission at retrial was based on the fact that "the body would have been found in any event . . ." as suggested by the United States Supreme Court. *Brewer v. Williams*, *supra*, 430 U. S. at 407 n.12. In the footnote the Supreme Court cites with approval *Killough v. United States*, 336 F. 2d 929 (D. C. Cir. 1964).

. . .

(p. 7)

The suggestion of the application of the "inevitable discovery rule", and the citation to *Killough*, *supra*, with its language as quoted above, by the United States Supreme Court, clearly indicates that the application of that rule by the Iowa Supreme Court, on facts even more positive toward discovery was constitutional and proper.

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(p. 10)

This Court should not reject the rule. It was, as indicated by the Iowa Supreme Court and the cases cited, accepted by most jurisdictions prior to the United States Supreme Court recommendation. The apparent imprima-

tur of the United States Supreme Court in *Williams v. Brewer, supra*, militates rejection absent further rejection by that Court.

In *United States v. Ceccolini*, 435 U.S. 268 (1978) the Court implicitly approved the rationale for the rule. The Court there upheld the use of a witness who had been identified in violation of the defendant's 4th Amendment rights.

*"The greater the willingness of the witness to freely testify, the greater the likelihood that he or she will be discovered by legal means, and concomitantly, the smaller the incentive to conduct an illegal search to discover the witness. (fn. omitted) Witnesses are not like guns or documents which remain hidden from view until one turns over a safe or opens a filing cabinet. Witnesses can, and often do, come forward and offer evidence entirely of their own volition. And evaluated properly, the degree of free will necessary to dissipate the taint will very likely be found more often in the case of live witness testimony than other kinds of evidence."* (emphasis added)

435 U.S. at 276-277. In the case of inevitable discovery, the evidence would "be discovered by legal means." The degree of certainty of discovery is the test of what it takes to "dissipate the taint." Thus if discovery is certain, and there is no bad faith, *See Ceccolini, supra*, 435 U.S. at 276 fn. 4 (omitted in quote above) there is no reason to exclude the evidence.

The application by the Iowa Court in the context of the instant case also was clearly proper. The Iowa Court

(p. 11)

held that the State had to establish by a preponderance of the evidence, 285 N.W. 2d at 260, that the evidence



"would have discovered" not that "discovery might have occurred." This is the equivalent of "actualities, not possibilities" suggested in *Hoffman, supra*, 607 F. 2d at 285 n.3. In *Brookins*, the Court stated:

"After the accused has challenged the legality of the witness' acquisition and of the use of the witness' testimony, the police must show that when the illegality occurred they possessed and were actively pursuing the evidence or leads that would have led to the discovery of the challenged witness and that there was a reasonable probability that the witness would have been discovered.

*Brookins, supra*, 614 F. 2d at 1048. The Iowa Court held that the police had to establish two things: that the police acted in good faith *and* that the evidence would have been discovered by legal means. This clearly meets the necessary burden for admission of the evidence. *United States v. Falley*, 489 F. 2d 33 (2d Cir. 1973); *Alderman v. United States*, 394 U.S. 165 (1969); *United States v. Massey*, 437 F. Supp. 843, 855, text and note 4 (M. D. Florida 1977).

The question then is; was there sufficient evidence upon which the Iowa court could find that the two conditions were met. The Iowa Supreme Court, on the question of whether there was bad faith stated:

"In light of the legitimate disagreement among individual's well versed in the law of criminal procedure who were given the opportunity for calm deliberation, it cannot be said that the actions of the police were taken in bad faith."

(p. 12)

*State v. Williams, supra*, 285 N.W. 2d at 261. This is based on the fact that the Iowa Supreme Court originally upheld the actions of the police and affirmed the convic-



tion by a five to four decision, *State v. Williams*, 182 N. W. 2d 396 (Iowa 1970), the United States District Court then granted habeas corpus relief *Williams v. Brewer*, 375 F. Supp. 170 S. D. Iowa 1974, which was affirmed by a split vote of a panel of the 8th Circuit Court of Appeals, *Williams v. Brewer*, 509 F. 2d 227 (8th Cir. 1974). This was then affirmed five to four by the United States Supreme Court with six justices writing separately. The Iowa Court was correct in finding no bad faith.

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 82-1140

ROBERT ANTHONY WILLIAMS,

Appellant,

vs.

CRISPUS NIX, Warden of the Iowa State  
Penitentiary,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF IOWA,  
CENTRAL DIVISION

Honorable Harold D. Vietor, Judge

BRIEF OF APPELLANT

ROBERT BARTELS

College of Law  
Arizona State University  
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Attorney for Appellant

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(p. 17)

II. THE STATE TRIAL COURT'S ADMISSION OF EVIDENCE RELATING TO THE VICTIM'S BODY VIOLATED PETITIONERS' RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS.

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A. The "Inevitable Discovery" Test Applied by the State Courts was Constitutionally Impermissible.

The District Court agreed with the Iowa courts that the victim's body and evidence derived from it were admissible under the "inevitable discovery"

(p. 18)

doctrine at Petitioner's trial. (Opinion p. 8). This doctrine, as articulated by the Iowa Supreme Court and approved by the District Court, involves a two-part test under which the state must show (1) that the police did not act in "bad faith," and (2) that the evidence probably would have been discovered without the initial unlawful conduct. 285 N. W. 2d at 262. As the District Court acknowledged, neither the United States Supreme Court nor this Court has adopted this hypothetical "inevitable discovery" doctrine. (Opinion p. 6). Because this proposed exception to the exclusionary rule is wholly inconsistent with decisions of the United States Supreme Court concerning the Fifth and Sixth Amendment and the "fruit of the poisonous tree" doctrine, this Court should reject the "inevitable discovery" doctrine in this case.

• • •

(p. 20)

Application of the constitutionally appropriate fruit-of-the-poisonous-tree standards to the instant case shows that the victim's body and the evidence derived therefrom should have been excluded from the trial: It simply can-

not be disputed that the body and the evidence connected with it in fact *were* discovered because Petitioner led police to the body following the unconstitutional interrogation.

In this regard, *Brown v. Illinois*, 422 U.S. 590 (1975), is especially instructive. In *Brown*, the defendant was arrested, without probable cause, at about 7:45 p.m. Following repeated *Miranda* warnings, he gave two incriminating statements, first at about 9:00 p.m., and then between 2:00 and 3:00 a.m. the following day. The Court reversed Brown's conviction, holding that both

(p. 21)

statements were fruits of the illegal arrest, and that the *Miranda* warnings did not sufficiently attenuate the taint. 422 U.S. at 604-605. The Court stated that in determining whether the "casual connection between the illegality and the confession" had been broken "for Fourth Amendment purposes," the *Miranda* warnings were important but not dispositive, and that at least three other factors were important: the "temporal proximity of the arrest and the confession," the "presence of intervening circumstances," and, particularly, "the purpose and flagrancy of the official misconduct." 422 U.S. at 603-604.

In the instant case, the "temporal proximity" of the initial illegality (the interrogation of Petitioner in violation of his right to counsel) to Petitioner's first incriminating statement and the discovery of the body was closer than that of the arrest, first statement, and the second statement in *Brown*. Moreover, in *Brewer*, the United States Supreme Court repeatedly commented on the flagrancy of the violation of Petitioner's rights, and on the fact that it was Detective Leaming's very purpose to uncover evidence relating to the victim before Petitioner

could consult with his attorney. *Brewer v. Williams, supra*, 430 U.S. at 399, 406, 407-08, 412. At the same time, in the instant case there were *no* intervening circumstances between the primary illegality and the discovery of the victim's body to dissipate the taint of the violation of Petitioner's right to counsel.

. . .

(p. 24)

- C. The Evidence Does not Show that the Victim's Body Would Have Been Found if Petitioner had not Led the Police to it.

As Sections A and B, *supra*, demonstrate, the hypothetical "inevitable discovery" doctrine applied by the Iowa Supreme Court was unconstitutional. Even if the doctrine were constitutional, however, the record shows that it was erroneously applied to the facts of this case.

First, the Iowa Supreme Court erred in concluding that law enforcement officials acted in "good faith"—the first requirement of that Court's own test. In *Brewer v. Williams*, 430 U.S. 357 (1977), the Court specifically found that Detective Leaming purposefully violated Petitioner's Sixth/Fourteenth Amendment rights in order to obtain incriminating information from him before he could consult with his attorney. 430 U.S. at 399, 406, 407-408, 412. Surely this kind of purposeful conduct cannot be regarded as being in "good faith."<sup>15</sup>

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<sup>15</sup> In this regard, the fact that the constitutionality of Detective Leaming's conduct "has caused the closest possible division of views in every appellate court which has considered the question," 285 N.W. 2d at 260-61, is irrelevant. The only decision that has the force of law is that of the majority of the Supreme Court in *Brewer v. Williams, supra*.

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IN THE UNITED STATES COURT OF APPEALS  
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ROBERT ANTHONY WILLIAMS,

Appellant,

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CRISPUS NIX, Warden of the Iowa State  
Penitentiary,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF IOWA,  
CENTRAL DIVISION

Honorable Harold D. Vietor, Judge

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• • •

II. THE APPLICATION OF THE "INEVITABLE  
DISCOVERY RULE" BY THE IOWA COURTS WAS  
IN ACCORD WITH THE CONSTITUTION AND DOES  
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(p. 20)

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"The greater the willingness of the witness to freely testify, *the greater the likelihood that he or she will be discovered by legal means*, and concomitantly, the smaller the incentive to conduct an illegal search to discover the witness. (fn. omitted) *Witnesses* are not like guns or documents which remain hidden from view until one turns over a safe or opens a filing cabinet. Witnesses can, and often do, come forward and offer evidence entirely of their own volition. And evaluated properly, the degree of free will necessary to dissipate the taint will very likely be found more often in the case of live witness testimony than other kinds of evidence." (Emphasis added)

(p. 21)

435 U.S. at 276-277. In the case of inevitable discovery, the evidence would "be discovered by legal means." The degree of certainty of discovery is the test of what it takes to "dissipate the taint." Thus if discovery is certain, and there is no bad faith, *See Ceccolini, supra*, 435 U.S. at 276 fn. 4 (omitted in quote above) there is no reason to exclude the evidence.

. . .

(p. 22)

The Iowa Court held that the police had to establish two things: that the police acted in good faith *and* that the evidence would have been discovered by legal means. This clearly meets the necessary burden for admission of the evidence. *United States v. Falley*, 489 F. 2d 33 (2d Cir. 1973); *Alderman v. United States*, 394 U.S. 165 (1969); *United States v. Massey*, 437 F. Supp. 843, 855, text and note 4 (M.D. Florida 1977).

The question then is; was there sufficient evidence upon which the Iowa court could find that the two conditions were met. The Iowa Supreme Court, on the question of whether there was bad faith stated:

"In light of the legitimate disagreement among individuals' well versed in the law of criminal procedure who were given the opportunity for calm deliberation, it cannot be said that the actions of the police were taken in bad faith."

*State v. Williams, supra*, 285 N. W. 2d at 261. See *State v. Williams*, 182 N. W. 2d 396 (Iowa 1970), (5-4 decision); *Williams v. Brewer*, 375 F. Supp. 170 (S. D. Iowa 1974), *Williams v. Brewer*, 509 F. 2d 227 (8th Cir. 1974), (2-1 decision), *Brewer v. Williams*, 430 U. S. 387 (1977) (5-4 decision). In addition, the facts show a search was continuing and in progress when the statements leading to the evidence were obtained. The Iowa Supreme Court was correct in finding no bad faith.

. . .